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SOME OBSERVATIONS ON THE NATURE AND WORK OF THE INTERNATIONAL BOUNDARY COMMISSION, UNITED STATES AND MEXICO*

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In a previous article in this journal[1] a survey was made of the fundamental issues involved in the increasing diversion of water from the Rio Grande and the Colorado. In the present article an attempt is made to present, first, a brief sketch of the nature of the boundary; second, a sketch of the antecedents, the history, the organization, the procedure, and the work of the United States-Mexican Boundary Commission; and third, some conclusions on or evaluations of the Commission itself.

1. Nature of the Boundary

The boundary between the United States and Mexico is about 2,000 miles long. As defined by the treaties of 1848,[2] 1853,[3] and 1884[4] it follows the Rio Grande for 1,300 miles between the Gulf of Mexico and a point near El Paso, thence about 560 miles overland to the Colorado River, up this river some 20 miles, and thence

*This article is based on a larger study, now approaching completion, of United States-Mexican boundary problems. The study is made possible by a grant from the Bureau of Research in the Social Sciences of The University of Texas. The material in the present article comes largely from the author's doctoral dissertation (Harvard University) entitled *Some Legal Problems Involved in the Nature and Work of the International Boundary Commission, United States and Mexico.*

[1] Timm, Charles A., "Some International Problems Arising from Water Diversion on the United States-Mexican Boundary," *The Southwestern Social Science Quarterly*, XIII, 1–15 (June, 1932).

[2] *Statutes at Large*, 922. Cited hereafter as *Stat.*

[3] 10 *Stat.* 1031.

[4] 24 *Stat.* 1011.

about 130 miles overland to the Pacific Ocean a few miles south of San Diego, California. At the time the boundary line was first surveyed and marked in accordance with the treaties of 1848 and 1853, it ran through territories containing few inhabitants except at isolated points such as what is now Juarez, Chihuahua. A few other settlements were found lower down on the Rio Grande; but west from Paso del Norte (Juarez) to the Pacific the region was for the most part treeless, waterless, and uninhabited.

Between 1848 and the present day many changes have been wrought. Ciudad Juarez now has 19,000 inhabitants; Nogales, Sonora, 13,000; Mexicali, Baja California, 7,000; Matamoros, 9,000; Nuevo Laredo, 15,000; and Piedras Negras, 14,000. On the United States side Brownsville has 22,000 inhabitants; Laredo, 30,000; El Paso, 100,000; and San Diego, 150,000. These few illustrations reveal that large areas that only a few years ago were either wholly undeveloped or were at most occupied by scattered ranches are today the centers of agricultural, mining, commercial, and industrial developments. Hence, it is obvious that whereas in former years the exact location of the boundary line at a given point was a matter of small or no importance, today it may be of vital concern. The development of mines, of irrigated farms valued up to $1,000 per acre, and of prospective oil fields even in the bed of the Rio Grande makes it highly essential that the governments and private individuals know the exact location of the line. As for cut-offs, or bancos, in the rivers, they were scarcely a problem until the last quarter of the nineteenth century. No one seriously cared whether or not the Boundary Commission surveyed them.

In respect of the use and control of boundary waters the contrast between the past and the present is equally striking. When the treaties of 1848 and 1853 were negotiated, the only concern was the preservation and protection of the right of navigation. True, the old *porciones*[5] usually ran to the rivers and sometimes across them, the purpose being to assure a water supply for the cattle on the ranches. Small areas were then and had been for a century or more under irrigation at several points along the Rio Grande, especially in the El Paso and Mesilla valleys, but there was no thought of a time when the Rio Grande would supply water for nearly two million acres. The Colorado River was then used even less than was the Rio Grande.

[5] *Porción* is the name applied to the old Spanish grants.

What is the situation today in respect of irrigation? Except as a legal point in argument, navigability is tacitly ignored. Instead, the governments are seeking agreement on the means of conserving, storing, and dividing the waters of the two major rivers, and even of the tiny Tia Juana River, for municipal, domestic, irrigation, and power consumption. It is estimated that the total annual water resources of the Colorado River basin are about 19,700,000 acre-feet. Already some 2,600,000 acres in this basin are under irrigation, with 8,500,000 acres ultimately irrigable. In the Rio Grande basin about 1,700,000 acres are now under irrigation, and an additional 1,700,000 acres are easily irrigable; yet the entire river yield of the Rio Grande basin is less than 8,000,000 acre-feet per year.[6]

Nor are the present boundary problems concerned entirely with water. The character of the rivers themselves is the source of constantly recurring difficulties. A brief description of the two river systems and their basins will clarify the general nature of the problems created by the rivers as boundary streams. Both rise in the Rocky Mountains, the Rio Grande flowing toward the Gulf of Mexico and the Colorado toward the Gulf of California. The Colorado system includes the Colorado and Green rivers and their tributaries. The whole basin covers an area of 244,000 square miles and includes portions of seven states of the United States and 2,000 square miles of Baja California and Sonora in Mexico. Its water comes almost entirely from snow and rain in the mountainous area of the head-waters. The Rio Grande, a stream 2,000 miles long, has a drainage area of about 180,000 square miles, but its sources of water supply are more varied than are those of the Colorado. It rises in southern Colorado not far from the Colorado River; hence it, too, receives water from the mountainous areas of the western states; but it also receives water from its tributaries in Texas and Mexico, the principal ones being the Pecos, Devils, Conchos, Salado, and San Juan. The rainfall is widely distributed, varying from seven inches at El Paso to thirty-three inches at Brownsville.

Both streams are alluvial in nature, especially in the lower sections. Both carry enormous quantities of silt. To illustrate:

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[6]These data are gathered from *Report of the American Section of the International Water Commission, United States and Mexico*, 1929. 71st Cong., 2d sess., *H. Doc.* No. 359. Hereafter cited as *Report of the American Section*. An acre-foot is the quantity of water covering one acre to the depth of one foot.

The silt deposit in Boulder Dam reservoir will likely be between 100,000 and 140,000 acre-feet per year; and in Elephant Butte reservoir the annual deposit is estimated to be 20,000 acre-feet. This means that the beds in the lower sections are constantly aggrading. Below Yuma the Colorado River bed aggraded nine feet from 1922 to 1928.[7] The bed of the Rio Grande at El Paso has aggraded equally as much since 1914. Furthermore, both streams are subject to violent and destructive floods.[8] As a result of these factors, the streams are unruly and tend to wander about over their flood plains, as is characteristic of alluvial streams. They are subject to both accretive and avulsive changes, and, except where the banks and beds are of rock, are in a state of constant disequilibrium.

It was to deal with these rivers, insofar as they form the international boundary, that the present International Boundary Commission was created by the Treaty of March 1, 1889.[9]

2. Antecedents of the Commission

Many of the problems and some of the powers and functions of the existing International Boundary Commission are, however, closely related to the boundary commissions set up by the two states under the treaties of 1848, 1853, and 1882. For this reason a brief statement regarding these early commissions may serve to explain the background of the boundary problems of today.

The treaty of Guadalupe Hidalgo, 1848, defined[10] the boundary between the United States and Mexico and provided for the surveying and marking of that boundary by a joint commission on which

> . . . the two Governments shall each appoint a commissioner and a surveyor who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They

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[7] *Report of the American Section*, p. 20; *Colorado River Development, S. Doc.* 70th Cong., 2 sess., VI (8989), No. 186, pp. 51, 52. The information regarding the aggradation at El Paso came from personal interviews.

[8] In the cloudbursts that occurred in September of 1932 both in the Big Bend section of Texas and on the Mexican tributaries, the Rio Grande rose 45 feet at Laredo. The Devils River, ordinarily a small creek, flowed over 500,000 second-feet for a period of several hours. International Boundary Commission, *Water Bulletin No. 2*, 1932, p. 17.

[9] 26 *Stat.* 1512.

[10] 9 *Stat.* 922, 926–928, Art. v.

> shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. . . .
>
> The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations. . . .

As thus defined, and as later surveyed and marked, the boundary was to cause serious difficulties to the two states, necessitating later treaties and commissions and finally a permanent commission. The first American commissioner on the earliest commission was Colonel John B. Weller, and the first surveyor, A. B. Gray. Major W. H. Emory was chief astronomer. The first Mexican commissioner and surveyor were, respectively, General Pedro García Condé and José Salazar y Larregui.[11]

Strangely enough, the chief difficulties of the survey arose from dissensions, not so much between the two national sections, as in the American Section itself. Aside from the serious problem occasioned by the inhospitable country through which the survey had to be made and by the inadequate and dilatory support accorded by the United States Government, the American Section appeared to be rent by personal jealousies and, more especially, by a clear-cut difference of opinion between the commissioner and the surveyor in regard to the initial point on the Rio Grande above El Paso. Weller had early been replaced by J. C. Fremont who before assuming his duties was in turn replaced by John R. Bartlett. Upon his refusal to sign the map of the initial point Gray was replaced by Major Emory. Thereafter the work continued until the Gadsden Treaty required the running of a new line from the Rio Grande to the Colorado.[12]

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[11] *Report of the Boundary Commission upon the Survey and Re-Marking of the Boundary between the United States and Mexico West of the Rio Grande, 1891–1896.* *S. Doc.* 55 Cong., 2 sess., XXIII–XXIV (3612–13), No. 247, Vol. I, p. 11.

[12] The documentary material on the vicissitudes of the American Section is voluminous. Some of the public documents bearing upon the early surveys follow: Emory, *Report; S. Ex. Doc.*, 32 Cong., 1 sess., IX (620), Nos. 60, 82; *S. Ex. Doc.*, 32 Cong., 1 sess., XIV (626), Nos. 119, 120; *S. Rep.*, 32 Cong., 1 sess., II (631), No. 344; *S. Ex. Doc.*, 32 Cong., 2 sess., III (660), Nos. 16, 38; *S. Ex. Doc.*, 32 Cong., 2 sess., VII (665), No. 41; *S. Ex. Doc.*, 33 Cong., special sess. (688), No. 6; *S. Ex. Doc.*, 33 Cong., 2 sess., VII (752), No. 55. For the story of the Gadsden Treaty and its antecedents, see P. N. Garber, *The Gadsden Treaty*, Philadelphia: University of Pennsylvania Press, 1933.

The quarrel in the American Section over the initial point on the Rio Grande was responsible in part for the Gadsden Treaty and had a direct bearing on the desire of the United States for a satisfactory railroad route from El Paso to the Pacific. Hence, Surveyor Gray was finally vindicated in his refusal to sign the original map calling for 32° 22′, instead of 31° 52′ as he contended it should be.[13] Even Emory excused himself for signing the original by saying that he attached a certificate stating that it was the initial point of the two *commissioners*, "and nothing else."[14]

The Gadsden Treaty, then, had as one of its chief purposes the provision of a satisfactory railway route to the Pacific.[15] In Article I it accepted the boundary as described in the Treaty of 1848 except for the portion between the Rio Grande and the Colorado. The same article provided for a boundary commission to survey the dividing line where it was not already established by the previous commission. In the new commission Major Emory served as American commissioner, and José Salazar y Larregui as Mexican commissioner. They began operations December 4, 1854; and on December 18, 1855, Emory reported, informally, the completion of the survey, the formal report being made later.[16]

During the next twenty-five years settlers began to occupy lands adjacent to the boundary, and mines were opened near the line. In consequence disputes arose over the exact location of the boundary line, these disputes being due, in many instances, to the obliteration of the original monuments or to the fact that the monuments were in numerous cases several miles apart. Smuggling and the presence of wandering tribes of Indians added

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[13]Garber, Chs. II, III; *S. Ex. Doc.*, 33 Cong., 1 sess., V (695), No. 29; *S. Ex. Doc.*, 33 Cong., 1 sess., VIII (698), No. 52.

[14]Emory, *Report*, I, 17. On the initial point controversy see Bartlett, J. R., *Personal Narrative of Explorations and Incidents in Texas, New Mexico, California, Sonora and Chihuahua Connected with The United States and Mexico Boundary Commission, During the Years, 1850, '51, '52, and '53.* New York: Appleton, 1854, Vol. I, pp. 150–152, 201–211, 341–348, 376; Vol. II, pp. 514–516.

[15]Garber, pp. 20, 21.

[16]Emory, *Report*, I, 26, 35, and *passim*. Aside from technical details the report includes elaborate illustrations and descriptions of the topography, climate, vegetation, and people of the region through which the survey was run. In fact it makes interesting reading even at the present time, as does Bartlett's *Personal Narrative*.

to the difficulties of the situation.[17] To terminate these difficulties the two governments, on July 29, 1882, concluded a treaty for the relocation of the land boundary.[18]

Article I of this convention provided for a "preliminary reconnaisance of the frontier," and the following six articles provided for an international boundary commission and for certain details of its work. By Article VIII the treaty required the completion of the work not later than four years and four months from the date of the exchange of ratifications. Article IX made the damaging of monuments a misdemeanor.

The preliminary reconnaisance was carried out in 1883,[19] but the other provisions of the treaty were not carried into effect before its expiration; consequently, the treaty was extended by the Convention of December 8, 1885;[20] revived by the Convention of February 18, 1889, since appointment of commissioners had been delayed;[21] and still further extended for two years by the Convention of August 24, 1894.[22] Meantime in 1891 the United States had appointed Lieutenant-Colonel J. W. Barlow and Mexico, Jacobo Blanco, as commissioners;[23] and these officials proceeded to relocate and remonument the boundary line, the final report being dated August 14, 1896.[24]

After the Barlow-Blanco Commission had expired with the conclusion of its work and the expiry of the Treaty of August 24, 1894, the land frontier continued to give trouble from time to time because of improper or inadequate monumentation, the destruction of monuments, and encroachments of buildings and fences upon the boundary line. No new land boundary commission has, however, been set up to solve these difficulties. Instead, the International (Water) Boundary Commission created by virtue of the stipulations of the Treaty of March 1, 1889, has

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[17] See, *e.g.*, *Foreign Relations of the United States*, 1867, II, 513ff.; *ibid.*, 1874, p. 755. Cited hereafter as *For. Rels.*

[18] 22 *Stat.* 985; see also *H. Ex. Doc.*, 47 Cong., 1 sess., XXII (2030), No. 180.

[19] *S. Mis. Doc.*, 48 Cong., 1 sess., II (2171), No. 96.

[20] 25 *Stat.*, 1390.

[21] 26 *Stat.* 1493.

[22] 28 *Stat.* 1213.

[23] *Report of the Boundary Commission, 1891 to 1896*, *S. Doc.*, 55 Cong., 2 sess., XXIII (3612), No. 247, p. 15.

[24] *Ibid.*, pp. 55–56. See also *Memoria de la Sección Mexicana de la Comisión Internacional de Límites entre México y los Estados Unidos que Restableció los Monumentos de El Paso al Pacífico*, New York: Polhemus, 1901.

been called upon to perform duties in connection with the land boundary.

3. Establishment and Later History of the Commission

While the two governments were making repeated efforts from 1882 to 1891 to get a commission at work on the land boundary, conditions were arising along the water boundary to cause serious concern. The principal difficulty was the tendency of the Rio Grande and the Colorado to make avulsive changes in time of flood. This general tendency, in conjunction with the particular situation at Morteritos Island,[25] led the governments to conclude the Treaty of November 12, 1884,[26] more clearly to define the general rules of accretion and avulsion as applied to the rivers in question, and definitely to regulate or control artificial changes in the course of the rivers, monumentation on bridges, and property rights in cut-offs.

Unhappily the Treaty of 1884 did not provide for machinery to execute it; neither did it foresee all the situations that would arise, such, for example, as the creation of "islands" or enclaves by later accretion upon bancos. As the territory along the rivers, especially along the Rio Grande, became more densely populated, unpleasant situations inevitably developed. In the El Paso-Juarez section of the river the city of Juarez sought, by the building of wing dams, to prevent the further encroachment of the Rio Grande into its limits.[27] Irrigators began to construct weirs to facilitate water diversion.[28] These and similar difficulties gave clear evidence of the need of an international commission to administer the provisions of the Treaty of 1884 as well as such provisions of the treaties of 1848 and 1853 as related to the preservation of the navigability of the boundary streams. A convention to meet this need was signed on March 1, 1889.[29] For

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[25]At the time of the original survey Morteritos "Island," near Roma, Texas, divided the Rio Grande into a northern and a southern channel, the latter being the deeper of the two. Since then the southern channel has silted up, thus leaving the "island," though United States territory, on the Mexican side of the river.

[26]24 *Stat.* 1011.

[27]*S. Ex. Doc.*, 50 Cong., 2 sess., IV (2613), No. 144. This was an early outcropping of the controversy over El Chamizal.

[28]*For. Rels.*, 1889, pp. 615–618.

[29]26 *Stat.* 1512. The Treaty of March 1, 1889, was extended from time to time and finally made permanent in 1900. These several conventions are:

the purposes of the present discussion the stipulations of this treaty that relate to the organization and procedural rules of the Commission are of chief concern. Briefly, Article I makes a general and broad grant of jurisdiction over all water boundary differences or questions to an International Boundary Commission. By the terms of Article II the Commission was to consist of two sections, one American and one Mexican, each to be composed of a commissioner, a consulting engineer, secretaries, and interpreters. The remaining articles prescribed rules for the Commission. Here, then, is the International Boundary Commission which is the subject of this study. At this point will be traced briefly its personnel and general record from the date of its creation to the present.

The first commissioners for the United States and Mexico were Col. Anson Mills and José María Canalizo, both of whom received their appointments in 1893.[30] Organization of the two sections was effected January 8, 1894; and the Rules and Regulations were agreed upon at the same time.[31] Mills served as American commissioner until his resignation, June 24, 1914.[32] During Mill's period of service the Mexican Section experienced four changes in the office of commissioner: José María Canalizo (1893–1894), Francisco Javier Osorno (1894–1898), Jacobo Blanco (1898–1906), Fernando Beltrán y Puga (1906–1914).[33]

During the incumbency of Mills the major activities of the Commission were concerned with the marking of bancos, the preparation of data and arguments for the negotiation of the banco elimination treaty of 1905, the elimination of some seventy-five bancos under the Treaty of 1905, and the study of the problem of equitable distribution of water in the El Paso-Juarez

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Aug. 24, 1894, 28 *Stat.* 1213; Oct. 1, 1895, 29 *Stat.* 840; Nov. 6, 1896, 29 *Stat.* 857; Oct. 29, 1897, 30 *Stat.* 1625; Dec. 2, 1898, 30 *Stat.* 1744; Dec. 22, 1899, I Malloy 1191; Nov. 21, 1900, 31 *Stat.* 1936. For diplomatic correspondence relative to the perpetuation of the Commission in the last named treaty, see *For. Rels.* 1900, pp. 786–8.

[30] *Proceedings of the International (Water) Boundary Commission, United States and Mexico, Treaties of 1884 and 1889; Equitable Distribution of Waters of the Rio Grande*, Washington: Government Printing Office, 1903 (2 vols.), I, 6. Cited hereafter as *Proceedings*.

[31] *Ibid.*, p. 7.

[32] Mills, Anson, *My Story*, 2d ed., Washington: Byron S. Adams, 1921, p. 302. Cited hereafter as Mills.

[33] From list furnished by Mexican Section.

Valley.[34] Special problems of importance were the San Elizario case, resulting in the award of the "island" to the United States and the case of El Chamizal, on which the commissioners could not agree and which was submitted to arbitration.[35] Mills's own estimate of the Commission's work during his term of office is as follows:

> During the sixteen years of our active service (the revolution in Mexico in 1911 having put an end to our activities), the Commission tried over one hundred cases of all kinds, disagreeing only in the Chamizal case, and preserved the peace and quiet of the entire Rio Grande border for these long years to the satisfaction of both governments and the people of the two nations.[36]

It is not believed that any one familiar with the history of the Commission would gainsay that appraisal.

Nearly three years before the resignation of Mills the activities of the Commission, at least as to banco elimination, ceased.[37] Until 1917 there was, in fact, no American boundary commissioner. Much to Mills's disgust, Secretary of State Bryan appointed John Wesley Gaines, "a discarded member of Congress," as secretary in place of the able Wilbur Keblinger.[38] As a matter of fact, Gaines acted officially as the American member of the so-called International Commission for the Study of Equitable Distribution of Water. He protested to Secretary of State Lansing

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[34]*Proceedings*, I, II; *Proceedings of the International Boundary Commission, United States and Mexico, American Section: Elimination of Fifty-Seven Old Bancos Specifically Described in the Treaty of 1905*, Washington: Byron S. Adams, 1910; and *ibid., Elimination of Bancos, Treaty of 1905, Second Series—Nos. 59 to 89*, 1911. Cited hereafter as *Bancos*.

[35]San Elizario, an "island" of some 13,000 acres created in the El Paso Valley by an avulsive action in 1857, was in 1897 awarded to the United States by the Commission. *Proceedings*, I, 101–107. "El Chamizal," a tract of some 600 acres in El Paso, is claimed by both Mexico and the United States. The Commission having failed to decide the issue, it was referred to arbitration. The United States rejected the award. The material on El Chamizal is voluminous. For a brief survey see Callahan, J. M., *American Foreign Policy in Mexican Relations*, New York: Macmillan, 1932, 443–444, 458–461.

[36]Mills, p. 297.

[37]Mills was notified August 31, 1911, by the Department of State not to join in any discussions as to river changes until specifically authorized. Minute for Feb. 15, 1912 (MS). The unsatisfactory result of the Chamizal arbitration as well as the Mexican revolution must have been in large degree responsible.

[38]Mills, p. 297.

against the proposal to re-create the Boundary Commission, declaring that he would not serve even if appointed.[39]

From 1914 until 1920 Antonio Prieto was the Mexican commissioner, but until 1917 he could not secure recognition by the American Section. In fact he was told March 4, 1915, that the American Section had no commissioner.[40] After the *de jure* recognition of the Carranza regime by the United States Lucius Hill was appointed American commissioner, whereupon formal meetings of the Commission were resumed.[41] But the Commission did not accomplish important results, the continuation of the revolutionary disturbances undoubtedly standing in the way of a successful prosecution of the work. Prieto was replaced on January 1, 1920, by Aurelio Leyva, who served until May 20, 1920. Joaquín Pedrero Córdova was Mexican commissioner from September 27, 1920, to October 26, 1921, being succeeded by Federico Ramos, who served until February 13, 1923.[42] During the greater part of this period the American Section was in a dormant state.

Activities were resumed in 1922 when George Curry became American commissioner. He and Ramos exchanged credentials on October 3, 1922,[43] and from that date to the present the Commission may be said to have gradually expanded in functions, powers, organization, and influence. Until the latter part of 1923 the Commission acted in an informal capacity, as is evidenced by the fact that the Department of State instructed Commissioner Curry to ratify the minutes between October 3, 1922, and November 27, 1923, recognition by the latter date having been extended by the United States to President Obregón of Mexico.[44] Between October

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[39]Gaines to Lansing, Dec. 20, 1915, Department of State archives on the Mexican Boundary, Envelope 56. Cited hereafter as M. B. Env. Gaines seems to have taken some interest in his work, and it may be said to his credit that his conclusion that the way to settle river problems was to build dams seems finally to be the solution that will be employed. Yet he was a politician first of all. On December 18, 1918, in a hearing before the Foreign Affairs Committee he boasted that he got rid of Mills's records and put them "where lawyers of the people could get at them." *Ibid.*, Env. 27. Mills kept his records with meticulous care, but some have not since Gaines's term been recovered.

[40]*Ibid.*, Env. 56. Prieto to "The Hon. Commissioner and Employees of the American Section of the International Boundary Commission."

[41]Minute for Nov. 20, 1917 (MS).

[42]List supplied by the Mexican Section.

[43]Minute No. 1, Oct. 3, 1922 (MS).

[44]Minute No. 12, Nov. 27, 1923 (MS).

3, 1922, and June 4, 1927, when L. M. Lawson became American commissioner, the Commission's minutes total ninety-six.[45] In all that time the Commission achieved few important results. Yet the minutes of those ninety-six meetings show clearly that the foundations of much of the later work of the Commission were being laid. To name but two: Banco and river surveys were made, and preliminary plans for the rectification of the river in the El Paso-Juarez Valley were prepared.[46]

The Commission entered a period of intense activity following the naming of Mr. Lawson as Commissioner. Sr. Serrano continued as Mexican commissioner until October 22, 1931, being succeeded by Sr. Armando Santacruz, Jr. Both of the present commissioners are engineers. Sr. Santacruz served previously as consulting engineer for the Mexican Section, and Mr. Lawson had had a long career in public and private service. As project manager for the Rio Grande Project he had done much to prepare the way for the work of rectification now being undertaken in the El Paso-Juarez Valley. Commissioners Lawson and Serrano were first occupied with the disagreeable task of eliminating bancos, a task now practically completed. Meantime final plans for the rectification of the river in the El Paso-Juarez Valley were prepared. To Mr. Lawson and Mr. Santacruz has fallen the duty of executing that plan as well as the plans for flood control in the Lower Valley and in Nogales.[47]

Now that the International Water Commission has been abolished and its duties transferred to the Boundary Commission,[48] to Commissioners Lawson and Santacruz has also fallen the important task of gathering data for an eventual treaty to provide for the equitable distribution of water in the boundary rivers. It is confidently believed that the present commissioners will meet this great responsibility with notable success.

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[45]Until June 4, 1927, Mr. Curry continued as American commissioner. In the Mexican Section Sr. Ramos served as commissioner until February 13, 1923, when he was succeeded by Gustavo P. Serrano, whose term ran from November 1, 1923, until October 22, 1931.

[46]Minute No. 50, Oct. 2, 1924; No. 61, June 23, 1925; No. 65, Sept. 10, 1925 (MS).

[47]See especially *Bancos*, Third and Fourth Series; and Minute No. 129, July 28, 1930, *Rectification of the Rio Grande*. This minute forms the annex to the Treaty of February 1, 1933.

[48]47 *Stat.* 475, 481, for the American Section of each. The Mexican Section reports that the transfer on the Mexican side was effected Jan. 1, 1932.

This brief survey of the Commission reveals that it has seen two periods of great and successful activity, the first during the incumbency of General Anson Mills, and the second since the present American commissioner, Mr. Lawson, entered the office in 1927. Much of the intervening period was covered by the long years of revolutionary disturbances in Mexico. Then from 1922 to 1927 much ground work had to be done before concrete results could be achieved. It may be noted, too, that the first American commissioner had technical training and that Mr. Lawson is an engineer, as are Srs. Serrano and Santacruz.

4. Organization of the Commission

The size and make-up of the organization of the Commission have always corresponded roughly to the number and character of the functions to be performed at a given time. The same may be said of the degree of attention paid to the office by both the governments and, for that matter, the commissioners themselves. In fact, no great expansion of the sections took place until the last few years. It should be noted at the outset that the Commission, *qua* Commission, scarcely has an organization. Each section — American and Mexican — has its own organization headed by a commissioner. The Commission as such may be said to have an organization only in the sense that there are joint meetings and often joint activities, such as surveys, in the field. Each government sets up, controls, and pays its own section. There are not even any joint offices, the Mexican Section being in Juarez and the American Section in El Paso. Joint meetings are held in the office of one section or another, as convenience may dictate, but usually alternating between the two. Sometimes, of course, meetings are held at other places, even away from the border. For example, the meeting at which was signed Minute No. 129, approving final plans for the work of rectification in the El Paso-Juarez Valley, was held in Mexico City, July 31, 1930.

When the Commission was first organized in 1894, each section had a commissioner, a consulting engineer, and a secretary, as provided by Article II of the Treaty of 1889. The work of surveying bancos called for the employment of a varying number of assistants in several capacities, as did the work of gathering hydrographic data.[49] In the years prior to 1932 the United States seemed inclined to provide separate agencies to make up the

[49] *Proceedings*, II, 278.

American sections on the international commissions for the study of the equitable distribution of the waters of the boundary streams, a practice that Mexico seldom followed. Instead, Mexico, for nineteen years of the period since 1894, has combined the work of the water commissions with that of the Boundary Commission. The United States did likewise in the case of Anson Mills and has once more, by formal act, reverted to the policy followed in the Mills administration.[50]

Since 1922 the normal tendency has been to increase the size and complexity of the organization of the sections. Finally, beginning with the latter part of 1931, when the American Section took over the United States portion of the hydrographic work on the Rio Grande and its tributaries, and especially since the latter part of 1933, when the sections had to prepare for the rectification work in the El Paso-Juarez Valley and flood control in Nogales and in the Lower Valley, an extensive reorganization and expansion took place. The present organization of the American Section is as follows.[51] At the head is, of course, the Department of State. Immediately below is the International Boundary Commission, American Section. Under the American commissioner are three divisions—the Enginering, the Hydrometric, and the Clerical, Fiscal, and Accounting,—and two special services—Engineering Advisers, and Legal and Administrative Counsel.

The Engineering Division consists of the consulting engineer, and draftsmen, computers, instrument men, chain men, and rod men. Formerly the major work of this division was concerned with boundary and banco surveys, but at present this function is overshadowed in importance by two other groups of activities: One, called Special Investigations, includes studies such as Colorado River, irrigated areas, Rio Grande dam sites, and Elephant Butte silt; the other, denominated Special Projects, is charged with the Upper Rio Grande Rectification Project, the Lower Rio Grande Valley Projects, and the Nogales Flood Control. The Hydrometric Division is composed of an associate engineer, junior engineers, and gage readers. Its work is confined largely to water measurements. The Clerical, Fiscal, and Accounting Division is made up of a chief clerk, a mails and files clerk, and stenographers.

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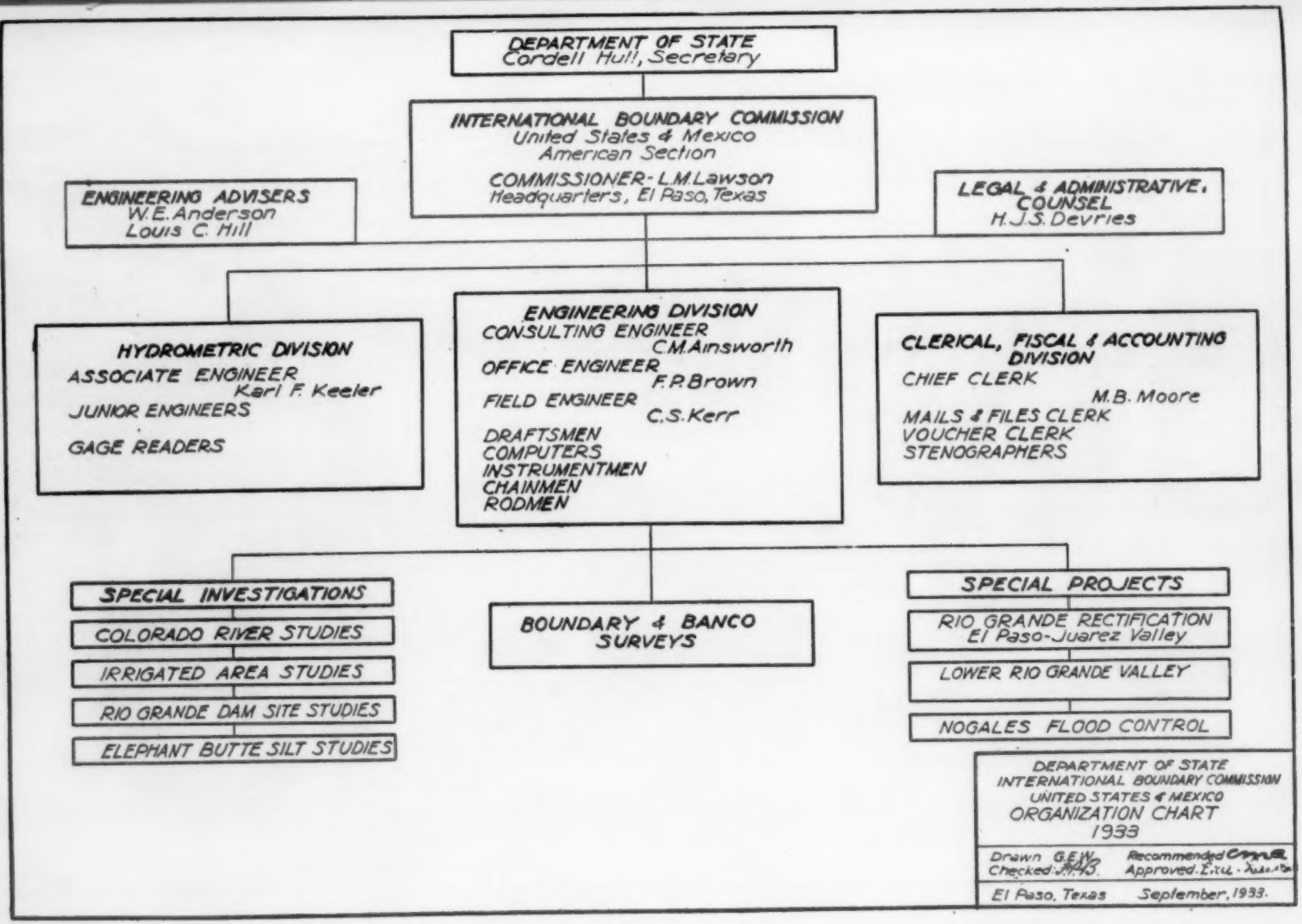
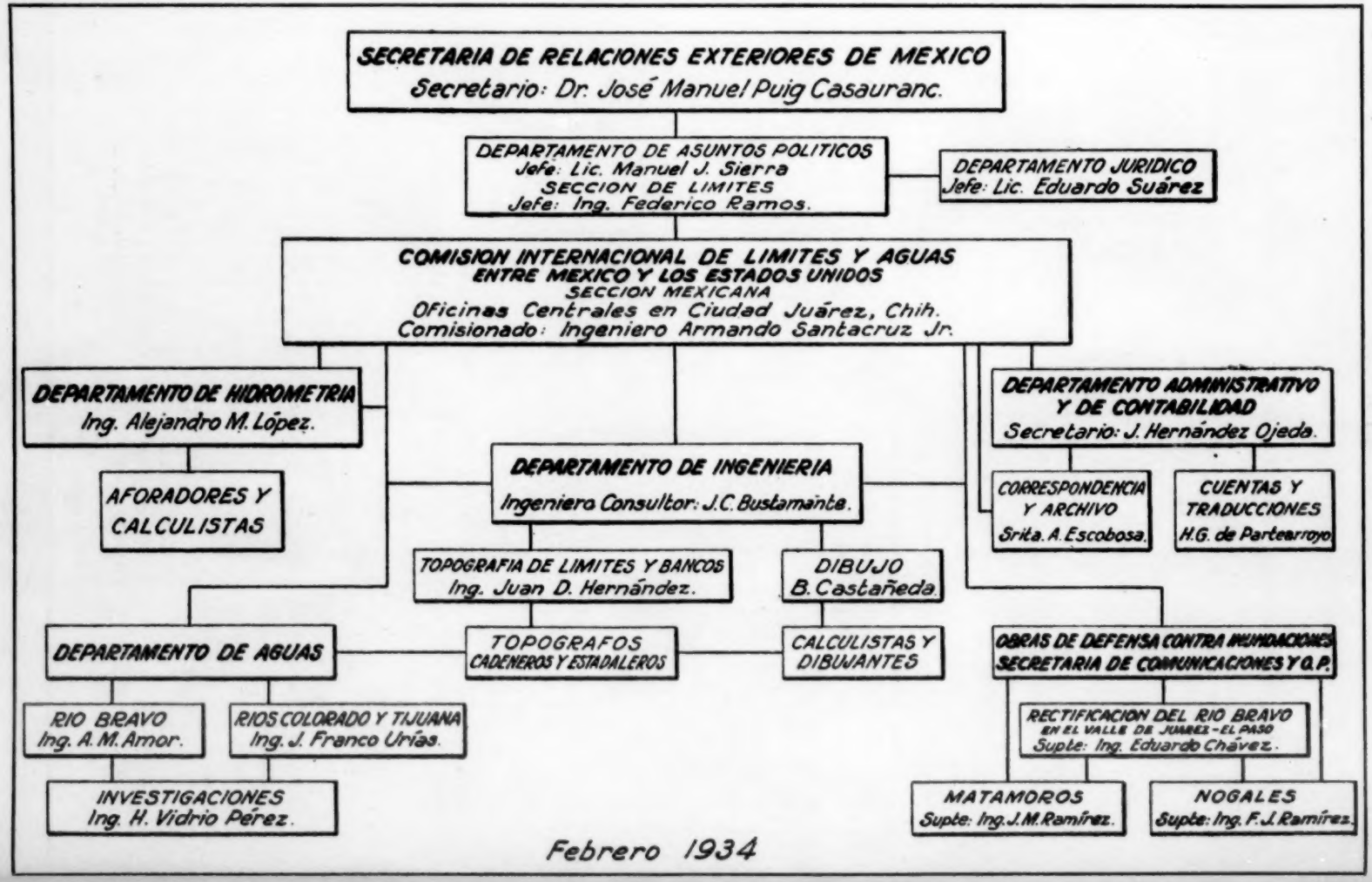
[50]List supplied by the Mexican Section.

[51]See chhart p. 285. Since this chart was prepared, a few organizational changes have been made, but the set-up remains essentially unaltered.


DEPARTMENT OF STATE
Cordell Hull, Secretary
INTERNATIONAL BOUNDARY COMMISSION
United States & Mexico
American Section
COMMISSIONER - L.M. Lawson
Headquarters, El Paso, Texas
ENGINEERING ADVISERS
W.E. Anderson
Louis C. Hill
LEGAL & ADMINISTRATIVE COUNSEL
H.J.S. Devries
HYDROMETRIC DIVISION
ASSOCIATE ENGINEER
Karl F. Keeler
JUNIOR ENGINEERS
GAGE READERS
ENGINEERING DIVISION
CONSULTING ENGINEER
C.M. Ainsworth
OFFICE ENGINEER
F.P. Brown
FIELD ENGINEER
C.S. Kerr
DRAFTSMEN
COMPUTERS
INSTRUMENTMEN
CHAINMEN
RODMEN
CLERICAL, FISCAL & ACCOUNTING DIVISION
CHIEF CLERK
M.B. Moore
MAILS & FILES CLERK
VOUCHER CLERK
STENOGRAPHERS
SPECIAL INVESTIGATIONS
COLORADO RIVER STUDIES
IRRIGATED AREA STUDIES
RIO GRANDE DAM SITE STUDIES
ELEPHANT BUTTE SILT STUDIES
BOUNDARY & BANCO SURVEYS
SPECIAL PROJECTS
RIO GRANDE RECTIFICATION
El Paso-Juarez Valley
LOWER RIO GRANDE VALLEY
NOGALES FLOOD CONTROL
DEPARTMENT OF STATE
INTERNATIONAL BOUNDARY COMMISSION
UNITED STATES & MEXICO
ORGANIZATION CHART
1933
Drawn G.E.W.
Checked: J.H.S.
Recommended
Approved:
El Paso, Texas September, 1933.



Febrero 1934

As is obvious, this division has charge of office records, finances, and correspondence.[52]

The two special services—the Engineering Advisers and the Legal and Administrative Counsel—deserve special mention. There are two engineering advisers, one being stationed in the Lower Rio Grande Valley and the other in the Colorado River area. Being on the ground and familiar with local problems through long experience each in his own area, they are of distinctive value to the American commissioner in his handling of problems special to those areas. The office of Legal and Administrative Counsel is primarily concerned with acquisition of title to lands essential to the construction of public works by the American Section, and with general legal advice to the commissioner and his staff. An assistant counsel has lately been appointed for service in the Lower Valley of Texas.[53]

The Mexican Section is organized on lines similar to those of the American Section. However, it follows literally the provisions of the treaty,[54] by having, in addition to the commissioner and consulting engineer, a secretary and an interpreter. Thus far the Mexican government has not provided its section with legal counsel stationed permanently at Juarez; instead, the *Departamento Jurídico* of the *Secretaría de Relaciones Exteriores* has charge of the legal problems.[55] A legal officer is sometimes assigned to temporary service in the Mexican Section in Juarez.

5. *Functions and Powers: A Summary Statement*

By reference to the treaties already mentioned, *i.e.*, those of 1848, 1853, 1882, 1905, and 1933, it can be seen that the Commission has "exclusive jurisdiction" of all differences or questions that may arise along the water boundary and, as a matter of practice, also along the land boundary; along the boundary rivers it suspends, or effects necessary alterations in, the construction of works of any kind, including bridges, that violate existing treaties; in practice it is the successor of the commissions created by the treaties of 1848, 1853, and 1882 in that it relocates the

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[52]As will be noted, the American Section does not have a secretary, no officer having been designated as such during the last few years. The secretarial work is performed mainly by the chief clerk.

[53]In this study of the office of Legal and Administrative Counsel, Mr. H. J. S. Devries, who heads this service, has rendered valued assistance.

[54]26 *Stat.* 1512, 1513, Art. II.

[55]See chart p. 286.

land boundary at any point and erects and maintains monuments; it surveys and marks changes brought about by the force of the river currents, whether such changes be caused by accretion, erosion, or avulsion; under the Treaty of 1905 it marks and eliminates bancos from the effects of the treaties of 1884 and 1889; and it surveys, sets, and maintains boundary monuments on all bridges between the two states.

Furthermore the Commission now measures the flow of the Rio Grande and its tributaries from San Marcial, New Mexico, to the Gulf of Mexico; it makes studies of possible sites for international dams; it gathers data for the eventual negotiation of a treaty on the equitable distribution of water; and it plans and executes great flood control projects such as those now under way in Nogales, on the Lower Rio Grande, and in the El Paso-Juarez Valley.

This summary statement may serve to give, for the purposes of the present discussion, a general picture of the powers and functions of the Commission. The rules under which the Commission operates also deserve some consideration.

6. Rules and Regulations

The Treaty of March 1, 1889, stipulated that the Commission carry on its work in accordance "with the requirements established by a body of regulations to be prepared by the said Commission and approved by both governments."[56] Consequently, immediately after the Commission completed its organization in 1894, it drew up a set of rules and referred it to the governments for approval. Formal approval was given by the Secretary of State of the United States on February 12, 1894, and by the Secretary of Foreign Affairs of Mexico on February 15, 1894.[57] Since then the rules have received no revision and but one addition, that of Article 13 approved by the United States, June 14, 1898, and by Mexico, June 28, 1898.[58] However, the Joint Journal of December 6, 1907, clarified the method to be employed in carrying into effect the provisions of the Treaty of 1905 for the elimination of bancos;[59] and the Joint Journal of May 12, 1910, defined more clearly the "duties of the consulting engineers under existing

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[56] 26 *Stat.* 1512, 1515, Art. VI.

[57] *Proceedings*, I, 7–8.

[58] *Ibid.*, I, 8.

[59] *Bancos*, First Series, p. 10.

treaties, recognized international procedure and decisions of the Joint Commission. . . ."[60]

The rules consist of twelve short articles and the additional article referred to above. Several of the articles depend entirely upon articles of the Treaty of March 1, 1889. Others, as Articles 2 and 3, have reference merely to the manner in which the records shall be made and kept. In brief, the rules prescribe, as to the commissioners, that they may secure any information through the consulting engineers, shall keep a joint journal signed by both, shall forward final decisions to their respective governments within three days, shall present cases alternately so long as both have cases, may ask testimonial or documentary evidence on cases, shall hold hearings where testimony is needed, may examine all witnesses, and may call meetings from day to day. As to the consulting engineers, they may not vote on questions, shall furnish on request any desired information to the commissioners, shall, according to the Joint Journal of May 12, 1910, render a joint report if they agree, such report to contain all information relied upon.[61]

In only two instances do the Rules refer specifically to the secretaries. By Article 1 the secretaries are denied the right to vote, and by Article 2 they are required to attest the signature of the commissioners, and each one is to keep one of the copies of the journal. However, the secretaries are specially concerned with those articles that bear upon the making and keeping of the records. By reference to the several articles it may be noted that the journal shall contain the engineers' reports, or a reference to them, and that:

Article 2

> The Joint Commission shall keep a journal of all its proceedings in duplicate (one copy for each commission) [*sic*], each copy in both English and Spanish, and the proceedings of each meeting or session shall be duly signed by both commissioners and attested by the secretaries, each secretary keeping one of the two journals.

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[60] *Ibid.*, Third Series, p. 14. The treaties and the rules and regulations may conveniently be found in International Boundary Commission, *Treaties, Joint Rules Governing the Commission, Personnel*, Washington: Government Printing Office, 1929.

[61] Joint Journal, May 12, 1910, *Bancos*, Third Series, p. 14. This Journal and also the Joint Journal of Dec. 6, 1907, *ibid.*, First Series, p. 10, relate to technical details of the work of the engineers and are, therefore, not here of vital concern.

Article 3

The record shall embrace everything material that occurs at each meeting.

Article 4

The final decision in each case shall be made in duplicate and in both languages, duly signed by both commissioners and attested by the secretaries, one copy to be forwarded to each government within three days after signing.

. . . .

Article 9

The evidence furnished by the witnesses shall be included in the journal of the day on which they are examined, briefly or in detail, if either of the commissioners so desire, according to Article 3 of these regulations.

The additional Article 13 requires that "in all cases presented by either commissioner, the original proceedings shall be taken down in the language of his country, . . . each day's proceedings to be signed before adjournment of the day. . . ."

A few examples drawn from the actual procedure of the Commission will shed light upon the manner in which the rules and regulations are applied.

7. Procedure

The procedure in special problems such as elimination of bancos and the distribution of water cannot be detailed in this article, but several phases of the Commission's work may properly be treated here in summary fashion. Mention will be made of such matters as sessions, records, bringing up of questions, work of the engineers, hearings, and decisions.

As to sessions and official seat of the Commission Article III of the Treaty of 1889 enjoins the Commission not to "transact any business unless both commissioners are present. It shall sit on the frontier of the two contracting countries, and shall establish itself at such places as it may determine upon; it shall, however, repair to places at which any of the difficulties or questions mentioned in this convention may arise, as soon as it shall have been duly notified thereof."[62] It was noted above that the seat of the two sections is at El Paso and Juarez respectively. Sessions are, however, frequently held in other localities. Until recent years the commissioners were in fact not even residents

[62] 26 *Stat.* 1512, 1514, Art. III.

of El Paso and Juarez.[63] If hearings on or near the *locus* of a problem are essential, or if the commissioners feel that they should personally examine the area involved, they will arrange a meeting at such place. In fact, Article IV of the Treaty of 1889 directs the Commission in the case of river changes that may affect the boundary line, "to repair to the place where the change has taken place or the question has arisen."[64] Meetings are held either at the call of one of the commissioners or in pursuance of a previous agreement.[65]

Though only a detail in connection with formal meetings, it should be noted that newly appointed commissioners and other officials named in the Treaty of 1889 always present their credentials at the first meeting they attend.[66]

The regulations contain detailed instructions in regard to the keeping of records. The originals of the minutes and journals are kept in each section in the language of that section, translations being furnished by the other section within three days of the final session.[67] Published minutes and journals customarily have the pages divided midway vertically, with parallel columns in English and Spanish. Article 4 of the Rules requires that final decisions be signed by both Commissioners. In practice this is done in the case of all minutes.[68] Attention has already been drawn to the requirement that decisions be sent to the governments, which have one month in which one or the other or both may express disapproval. In effect every minute is transmitted to the governments. Formerly the governments expressed positive approval but in late years the tendency is merely to acknowledge receipt of the minute. This is more in accord with Article VIII

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[63]Anson Mills resided for several years in Washington, whence he went to the frontier only to attend to pressing boundary matters. Mills, p. 210.

[64]An instance, one of many, where personal inspection and hearings in regard to a cut-off took place, was on April 21, 1928, when the Commission held a meeting at Rio Grande City to consider the case of Las Adjuntas Banco. A public hearing was also held at that place. Minute No. 103, *Bancos*, Third Series, p. 51.

[65]See, e.g., Minute No. 84, Sept. 8, 1926; Mnute No. 85, Sept. 17, 1926. *Bancos*, Third Series, p. 25; *Rules and Regulations*, Article 13 (add.).

[66]Minute No. 1, Oct. 3, 1922 (MS); Minute No. 1, Nov. 20, 1917 (MS); Minute No. 12, Nov. 27, 1923 (MS).

[67]Article 13 (add.), *Rules and Regulations*.

[68]There appears to be but one case where a minute, recorded formally, was not signed by a commissioner. Minute No. 77, July 15, 1926 (MS). The Mexican commissioner objected to the wording of the minute.

of the Treaty of 1889, which holds that decisions are binding unless disapproved.[69]

With regard to the contents of minutes it will be recalled that Article 3 of the Rules states that "the record shall embrace everything material that occurs at each meeting," Article I calls for the inclusion, in detail or briefly by reference, of engineers' reports, and Article 9 gives each commissioner the opportunity to include evidence given by witnesses. In actual practice the length of minutes varies with the type or importance of subject matter. A meeting called merely for a formal purpose, such as receiving a report of the engineers on a routine matter, will require a minute of only a few lines. On the other hand, the minute recording final approval of the rectification plans for El Paso Valley covers eight typed pages.[70] Where there is a contest over an area of land, for example, the minute is likely to include the verbatim evidence of witnesses. However, the tendency is not to include in a formal minute matters over which the commissioners disagree.[71] It is undoubtedly advisable to consider all discussions as informal until agreement is reached.

Two remaining points relating to records should be noted: One is that in the term of Anson Mills the formal records of a meeting were called joint journals, whereas since 1922 they have been called minutes. The difference is not material. The second point, one of more significance, is the fact that the Commission formerly published rather voluminous reports of all its activities, whereas since 1922 it has, except for the series of water bulletins, recently begun, published reports of banco elimination only.

A procedural matter of considerable importance is the manner in which the Commission becomes seized of a question. Articles IV and V of the Treaty of 1889 state categorically that the local authorities of the locality affected by the matter shall notify their respective commissioners of cases or problems that have arisen. This method has, in fact, been commonly employed,[72] but

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[69]Cf. Knox to Mills, March 29, 1910, *Bancos*, First Series, p. 216; and Kellogg to Lawson, May 5, 1928, *Bancos*, Third Series, p. 35.

[70]See, e.g., Minute No. 83, Aug. 4, 1926, *Bancos*, Third Series, p. 17; and Minute No. 129, July 31, 1930 (MS).

[71]This is in contrast to the Minute of April 27, 1918, (MS) in which Commissioners Hill and Prieto recorded their differences over plans to settle the problems of El Chamizal, Córdoba, and San Elizario.

[72]Thus when the Commission considered the matter of levees below the international dam near El Paso, the question was presented by the mayor of Juarez. Minute No. 107, May 29, 1929 (MS).

questions are also frequently presented by one or the other government.[73] It would appear, too, that the Commission will sometimes take cognizance of a question or problem presented by private parties.[74] Finally, the commissioners may, apparently without notification by any official, bring a matter before the Commission, that is, so long as the question falls clearly within its legal powers.[75]

A few procedural aspects of hearings and testimony deserve brief comment. Article VII of the Treaty of 1889 gives the Commission the power to "summon witnesses and to compel the attendance of such witnesses, who shall give their testimony . . . ," this testimony, according to Article 7 of the Rules, to be taken "according to the laws of their (the witnesses) respective countries." In practice, a summons to appear is usually informal, although the minutes contain at least one record of a formal summons, ending as follows: "In this the witness will not fail under the penalty of attachment and the fines that may be imposed for contempt."[76] The Commission could not itself enforce a summons, but no definite test has yet arisen.

Another question involved in the taking of testimony is whether or not legal counsel may appear and cross-examine witnesses in accordance with the usual practice in common law countries, a practice not ordinarily followed in civil law jurisdictions. That counsel do appear on behalf of claimants is demonstrated in several of the banco cases,[77] but there is, it is believed, no documentary evidence that the Commission does not permit the cross-examination of witnesses by counsel. The commissioners themselves may and do cross-examine witnesses. Here lies a question embedded not merely in the differences between the two legal

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[73]To illustrate, on November 27, 1923, the American commissioner presented the matter of tracing the line around Morteritos, stating that his government had asked for an early decision. As shall be noted, all special duties and powers arise from special instructions or statutes.

[74]Thus the Commission considered the request of the El Paso street car company to build a bridge across the Rio Grande. Minute No. 27, March 3, 1924 (MS).

[75]For example, on one occasion the American commissioner suggested that the engineers be instructed to investigate the river changes at the mouth of Campo Grande Arroyo and it was so ordered. Minute No. 102, Feb. 27, 1928 (MS).

[76]Minute No. 58, June 1, 1925 (MS).

[77]For example, Minute No. 123, March 21, 1930, *Bancos*, Fourth Series, p. 41.

systems but also in the distinction between the Commission as an international, quasi-judicial body, and an ordinary domestic court in the United States. It is believed that attorneys, usually untrained in international law, frequently overlook these salient facts.[78]

There is also the question of the relative value assigned by the Commission to evidence. The question arises almost exclusively in cases involving river changes. In order of decreasing value evidence may be listed thus: first, report and maps of consulting engineers; second, ground evidence; third, oral and written statements. It is significant that Article IV of the Treaty of 1889 directs the commissioners to make personal examinations on the ground and to make comparisons with the bed of the river as it formerly ran, *i.e.*, old surveys will be relied on. The Rules, Article 6, supplement the above article by stating that the commissioners "may ask testimonial or documentary evidence" in case the examination by them or by the engineers is not sufficient. The whole tenor of the documents gives preference to scientific as opposed to hearsay or personal beliefs, opinions, or recollections. In evidence thereof are the joint journals of December 6, 1907,[79] and May 12, 1910.[80] The former defines the best evidence to be the report and maps of the consulting engineers. It may be safely concluded that strong ground evidence cannot be overcome by affidavits, but that affidavits and other non-scientific testimony will often be accepted as corroborative of indefinite scientific evidence.[81]

Finally, the rules governing the consulting engineers in the making of their studies and reports on bancos state that[82]

> Should a prior change to the one under consideration be set up the Commissioners will always assume that such prior change was caused by gradual erosion and deposit, after the usual manner of the river, unless said prior avulsive change can be conclusively proven

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[78]The decision of the commissioners to do the cross-examining and not to permit attorneys to do it is, in effect, stated in Minute No. 122, March 18, 1930, *Bancos*, Fourth Series, p. 37. This was the Weber Banco case. Feeling had become somewhat tense in El Paso over the whole banco situation.

[79]*Ibid.*, pp. 12–14.

[80]*Ibid.*, p. 15.

[81]A striking example is the contest over Las Adjuntas Banco. See Minute No. 91, April 21, 1928. *Bancos*, Third Series, pp. 51–65; Joint Report, Sept. 1, 1927, *ibid.*, pp. 57–63.

[82]*Ibid.*, p. 10. See also Joint Journal, May 12, 1912, *ibid.*, p. 14.

> by reliable surveys and well-qualified witnesses, and the usual evidence on the ground which would clearly indicate a prior avulsive change.

In other words, the burden of proof is on those who allege that a prior change was avulsive.

8. Conclusions

In the preceding pages a survey, though in brief compass, was made of the United States-Mexican boundary and of the background, organization, powers, functions, procedure, and achievements of the International Boundary Commission set up to deal with the problems along that boundary. A few conclusions may now be drawn in an attempt to evaluate the commission in respect both of its nature and of its work.

The first conclusion is that the Commission is to a considerable degree unique as to nature, powers, and work. It is not an arbitral tribunal, as that term is ordinarily understood; yet it renders decisions on many classes of boundary problems, and these decisions are rarely disapproved by the governments. The treaties give it no definite powers of inquiry and conciliation; yet much of the work of the separate sections has consisted and now consists of making investigations and recommendations. It has no treaty authority over the land portion of the boundary, but in fact all technical questions affecting that boundary line are handed to it for solution. The older treaties give it no administrative power; but in recent years, and to an increasing extent, it has acted as an administrative agency for large public undertakings along the border. Furthermore, it began as a body primarily technical, tended thereafter for a period of years to become legal and political in composition and work, and has lately grown into a large, efficient engineering organization, headed by engineers, staffed mainly by engineers, and engaged primarily in engineering tasks.

In several, if not all, of these respects it varies widely from the Canadian-American Joint Commission, which is endowed specifically by the Treaty of 1909 with definite arbitral, judicial, administrative, and investigative powers and is, to a large extent, legal in its nature and work.[83] The latter body has no large

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[83]Chacko, C. J., *The International Joint Commission*, New York: Columbia University Press, 1932, *passim*.

engineering staff and does not undertake construction of great public works. Furthermore, it consists of six members, three from each state, whereas the United States-Mexican Commission is composed of but one commissioner from each state. The conclusion is warranted, then, that the United States-Mexican Commission is partly judicial but mainly technical, administrative, and investigative.[84]

A second conclusion is that the Commission has been measurably successful in its work, and that the future seems certain to bring even greater success. Its difficulties have been far greater than have been those of the Commission on the northern boundary of the United States. In the first place, relations between the United States and Mexico have been, during much of their history, notably unhappy. Even yet it would be short of the truth to say that their relations are as cordial as are the relations of the United States with Canada. Differences in culture, in background. in legal systems, and in economic development have operated to make difficult a good understanding between the peoples of the United States and Mexico. Furthermore, there were the long, tragic years of the Mexican revolution. It may be noted, too, that the boundary streams, with their shifting channels, and their dearth of water for vast areas trying desperately to get water for arid wastes, have not conduced to an easy solution of the boundary problems. In spite of these and related difficulties the Commission has labored during most of the time to find solutions satisfactory to both peoples and has, by and large, succeeded in its undertaking. It failed in the case of El Chamizal, and the great task of water storage and distribution lies before it; but it has settled most of the banco problems.[85]

Its uniform success may be ascribed to several factors. One is the fact that the Commission in theory and in practice operates on the basis of the absolute equality of the two states. So does

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[84]The European river commissions have to do principally with matters of navigation, police, and tolls, and are designed in part to secure rights of non-riparians upon certain navigable streams. Hence, they offer contrasts rather than parallels to the Commission that is the subject of the present study. See Chamberlain, J. P., *The Regime of the International Rivers: Danube and Rhine*, New York: 1923, *passim*.

[85]The work of surveying and eliminating some 165 parcels of land, giving some to the one, some to the other state, has been a huge task, especially when many of such tracts were claimed by both Americans and Mexicans, whose titles were necessarily affected by the decisions of the Commission on the location of the boundary and the character of river changes.

the Canadian-American Commission; but it is believed that for the character of work that the United States-Mexican Commission must do, it is preferable to have but two commissioners. Another factor contributing especially to its later success and its promise of a brilliant future is its steady insistence on avoiding strife and on doing something practicable. If a given problem, as Chamizal, cannot be settled at a given time, the Commissioners simply avoid the subject and direct their energies toward some constructive work in which both states have a vital interest, such as flood control and river rectification. Instead of quarreling over legal rights to water the Commission sets about with its two sections of experienced engineers to make a careful survey of all water resources in the boundary rivers and their tributaries and of all storage possibilities, including great international dams, in order to discover if by coöperative endeavor the two states might not secure enough water for all reasonable uses. Still a third factor making for the success of its work, especially in late years, is the fact that both commissioners are, as has been stated, engineers, but engineers with a broad knowledge of international law and relations. Finally, let us note that the Commission operates on a full-time basis. It is always at work. The commissioners and their staffs give practically all of their time to the tasks before the Commission; they do not look upon it as a temporary or spasmodic matter; they stay on the frontier and are intimately familiar with the whole river and land boundary.[86]

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[86]Attention should also be called to the steadily improving tone of Mexican-American relations in recent years. This has been particularly noticeable along the boundary since the decision of the Department of State, early in the term of Commissioner Lawson, to undertake in good faith the application of the banco elimination treaty to the El Paso-Juarez Valley. Furthermore, general relations of the two states, strained for a time as a result of the execution of the terms of the Constitution of 1917, have become definitely more friendly.

ECONOMIC AND SOCIAL ASPECTS OF FARM TENANCY IN TEXAS*

BY KARL E. ASHBURN
Southern Methodist University

I

Tenancy[1] has grown *pari passu* with the development of cotton production in Texas, and since 1880 the percentage of tenancy has been higher than in the United States as a whole.[2] Although the first figures on tenancy were given in the Census of 1880, the tenant system existed in Texas to some degree before this time.[3] Figures from the United States Census reveal that the percentage of owner and manager farm operators in Texas was greater than the percentage of tenant operators from 1880 to 1900. The percentage of tenant operators, however, has been greater than the percentage of owner and manager operators since 1900, and

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*This article is adapted from the author's *The Development of Cotton Production in Texas*, a thesis submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of Economics of Duke University, 1932.

[1]*Tenancy* is the system by which land is occupied and operated by persons other than owners. It is commonly known as a system of renting and refers to the renting of land for agricultural purposes. *Tenantry* refers to the people in a system of tenancy, the tenant. *Land tenure* is the system by which land is occupied and operated.

[2]The following table shows the increase in tenantry in Texas from 1880 to 1930. The figures are taken from the United States Census:

	1930	*1925*	*1920*	*1910*
Total farms	495,489	465,646	436,033	417,770
Owners and Managers	193,829	102,695	203,724	198,195
Tenants	301,660	281,225	232,309	219,575
	1900	*1890*	*1880*	
Total farms	352,190	228,126	174,184	
Owners and Managers	177,199	132,616	108,716	
Tenants	174,991	95,510	65,468	

[3]Census of 1900, Vol. VI, part II, Crops and Irrigation, pp. 407–19. Also see *Plantation Farming in the United States*, United States Bureau of the Census, Washington, 1916, pp. 7–8.

at present it is over sixty per cent.[4] From the available evidence, it seems certain that a very large number of Texas farms will continue to be operated by a more or less permanent class of tenants.

Tenancy in Texas is closely related to fertile soils and to the one-crop system. In those areas of the state where the soil is favorable to cotton growing, a high degree of tenancy will usually be found.[5] Cotton is a crop that is peculiarly adapted to tenancy; and the one-crop system in the case of cotton, with all other crops subordinated or omitted, easily lends itself to renting. Incidentally, dependence upon cotton as a sole source of income with which to purchase ordinary family and farm needs often results in denying the operator's family the essential things for its welfare. During a long period of good prices for cotton, this system is profitable if one considers the profit to consist only of the returns from the year's operation; but during a period of prevailing low prices, such a system is disastrous.[6] This fact is well illustrated by the current world-wide depression which led to the consequent collapse of the market for cotton bringing economic distress and suffering to thousands of Texas tenants.[7]

II

Share renters and share croppers[8] constitute the two main types

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[4]The percentage distribution of owners and managers, and tenants in Texas from 1880 to 1930 is indicated by the table below. The figures are taken from the United States Census:

	1930	*1925*	*1920*	*1910*	*1900*	*1890*	*1880*
Owners and Managers	39.1	39.6	46.7	47.4	50.3	58.1	62.4
Tenants	60.9	60.4	53.3	52.6	49.7	41.9	37.6

[5]See Census of 1930, Farm Census, Preliminary Announcement, State of Texas, July 7, 1931.

[6]See Rex E. Willard, *A Farm Management Study of Cotton Farms of Ellis County, Texas*, United States Department of Agriculture Bulletin No. 659, Washington, 1918, p. 2.

[7]Peter Molyneaux, *Economic Nationalism and Problems of the South*, Dallas, 1933, p. 4.

[8]The United States Census reveals that there were 495,489 farm operators in Texas in 1930, 193,829 of these being owners and managers and 301,660 tenants. Classified according to color, 236,321 of the tenants were white, and 65,339 were colored. Classified according to types, 16,874 of the 301,660 tenants were cash tenants; 105,122 were share croppers, and 179,664 were share renters. Of the 16,874 cash tenants, 15,479 were white, and 1,395 colored. Of the 105,122 share croppers, 68,874 were white and 36,248 colored. Of the 179,664 share tenants, 151,968 were white and 27,696 were colored.

of tenants in Texas.[9] Under the share renter system of land tenure the operator owns his own farm equipment and work animals, and pays the owner a stipulated proportion of all the crops produced.[10] The landlord's share in Texas is one-fourth of the cotton crop and one-third of all other crops. Under the share cropper system of land tenure the owner furnishes the land, the necessary work animals and farm equipment, a tenant house, and generally a garden patch for the use of the cropper and his family. In return the landlord receives one-half of the cropper's cotton and other crops. Share croppers are essentially laborers under a system which gives them a personal interest in the crops.[11] There is more supervision by landlords over share croppers than over share renters. Share renters usually receive little supervision, while the share cropper receives a great deal. The difference in the amount of supervision of the two classes of tenants accounts in part for the social stigma popularly placed upon the share cropper system of land tenure.[12]

A large number of tenants in Texas never rise to ownership principally because of personal limitations, such as lack of education and training, shiftlessness, inertia, and unwillingness to assume risks. A considerable number have reverted to tenancy during the past several years through financial inability to meet the payments on their farms.[13] Although some tenants who may

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"White" includes Mexicans. "Colored" includes Negroes, Indians, Chinese, Japanese, and other non-white races. See Census of 1930: Agriculture-Texas, First Series, pp. 3, 5, 26.

[9]The number of negro tenants, according to the census, has been much smaller than the number of white tenants since 1880. The greatest number of white tenants is located in the Blackland belt. The negro has not moved into the Blackland belt in great numbers because of the keen competition of the whites for cotton land there. While the greatest number of tenants are located in Eastern Texas and the Blackland belt, tenants are to be found scattered over the entire state.

[10]J. T. Sanders, *Farm Ownership and Tenancy in the Black Prairie of Texas*, United States Department of Agriculture Bulletin No. 1068, Washington, 1922, pp. 34–43. See Census of 1930, Agriculture-Texas, First and Second Series.

[11]See Willard, *op. cit.*, pp. 2–3.

[12]See Sanders, *op. cit.*, pp. 21–22.

[13]The number of farms changing ownership in Texas in 1933 due to foreclosure of mortgages, bankruptcy, delinquent taxes, and related defaults was 32.8 per 1000 farms. See B. R. Stauber, *The Farm Real Estate Situation, 1932–33*, United States Department of Agriculture Circular No. 309, Washington, 1933, pp. 42–43.

be financially able to purchase a small farm prefer to remain tenants because of certain factors such as the price of land, most tenants desire to become farm owners in order to own a home, to enjoy greater economic independence, and to reap the benefit from any possible increase in land values. Many tenants are discouraged when they fail to achieve ownership, and become discontented because they are controlled by their landlords or creditors.

One great advantage of farm ownership over tenancy is that the owner is in no danger of being told to move in order to make a place for someone else, provided he keeps out of debt. The average tenant farmer, on the other hand, shifts from farm to farm every few years.[14] The majority of contracts between the tenant and the landlord in Texas are not written but are verbal, and in most cases run for one year only. Thus without security of tenure the tenant has little or no incentive to preserve the quality of the land, but, on the contrary, has every incentive to extract as much plant food as possible.[15] The short tenure of the tenant, especially the share cropper, is one of the principal reasons why tenants make little effort to keep up the fertility of the soil by artificial methods, or by rotation of crops.

Share croppers shift from farm to farm more frequently than share renters. The average share cropper has only a few household articles and his family to move; consequently, he is more of a transient than the share tenant who owns his farming equipment. Financial pressure or personal faults of the farm operator cause a greater amount of moving among the poor tenants than among the more able tenants. The majority of tenants very seldom shift for social, educational, or health reasons. It is encouraging to note, however, that good tenants sometimes move for these reasons.[16]

III

The majority of tenants are poor business managers, and consequently accumulate little wealth, even during periods of so-called prosperity. Few of them keep any records or accounts covering

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[14]See E. V. White and William E. Leonard, *Studies in Farm Tenancy in Texas*, University of Texas Bulletin No. 21, Austin, 1916, pp. 1–36, Sanders, *op. cit.*, pp. 46–50, and Molyneaux, *op. cit.*, p. 2.

[15]*Proceedings of the Texas Cotton Committee*, 1928, p. 7. See United States Department of Agriculture Bulletins No. 659 and No. 1068.

[16]Sanders, *op. cit.*, pp. 46–50.

their expenditures or farming operations. When in possession of a surplus, they frequently dissipate it or invest it unwisely.[17] Of course, the low agricultural returns during the past few years have made it almost impossible for the tenant to accumulate a surplus above living costs, even if he is very frugal. As a matter of fact, it is probable that no similar proportion of the population of the United States lives so near the level of bare subsistence,[18] even in times of the greatest general prosperity, as do the great bulk of the tenants of Texas and other Southern cotton-producing states.[19]

One factor that has handicapped the economic progress of the tenant is the extremely high price that he has been forced to pay for credit. The tenant borrows from supply stores, banks, landlords, and individuals, sometimes using all these types of credit. Supply stores, in the main, charge considerably higher prices for supplies for which payment is deferred than they do for supplies for which cash is paid or for which payment is made within thirty days. The general practice is to charge the same price for both cash and time sales at the time of purchase, but when the account runs for more than thirty days interest at rates ranging from 8 per cent to 10 per cent is added. Some of the supply stores figure the interest at a flat per annum rate regardless of the time the tenant pays his account. Thus if the interest rate is 10 per cent, and the farmer pays his account at the end of six months, he pays 20 per cent per annum.[20]

Tenants who can establish credit lines at the local banks prefer to borrow from them and make their purchases with the borrowed funds rather than buy on credit from the supply stores. The personal character of the tenant and his business ability influence the interest rate that he must pay for bank loans. The customary interest rate charged the farmer in Texas for bank credit is 10 per

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[17]E. B. Schwulst, *Extension of Bank Credit*, New York, 1927, p. 109.

[18]Molyneaux, *op. cit.*, pp. 3–4.

[19]Molyneaux contends that the relative economic inferiority of the Southern cotton-producing states is due to the fact that for over a century more than half of the people of these states have depended for a living, either directly or indirectly, on the production of export commodities, chiefly cotton, and have sold their products at a world price-level, while residing in a high-tariff country in which a relatively high domestic price-level has been artificially maintained.

[20]See Walton Peteet, *Farming Credit in Texas*, Texas Agricultural and Mechanical Service Bulletin No. 34, College Station, 1917, p. 5.

cent, and a large proportion of the bank loans are discounted.[21] The tenant is often compelled to pledge farm equipment for loans. The chattel mortgage and the one-crop system tend to hold large numbers of tenants in economic bondage, as they must plant what their creditors and landlords demand.

Tenants incur much of their indebtedness for running expenses in the way of household necessities and clothing. Some landlords "stand good" for their tenants' grocery and clothing bills and bank loans or even lend them money. In cases of this nature the tenant holds the lever; and while some owners would be glad to get rid of certain tenants, they must retain them until they have regained the amounts due on their endorsements. Often the landlord is not repaid a considerable portion of the advances made to the tenant, especially the share cropper. During the period of the depression the system of "standing good" for tenants has been a severe drain upon the financial resources of landowners. According to Dr. Calvin B. Hoover, who is now serving as an economic advisor to Secretary of Agriculture Henry Wallace, thousands of landowners in the Southern cotton-producing states became bankrupt on account of it. Moreover, it was undoubtedly responsible for throwing large numbers of tenant farmers out of employment,[22] and added greatly to the relief burden.

The Texas Relief Commission the latter part of September, 1934, classified only 74 of the 254 Texas counties as "urban." The balance of the 254 counties were termed "rural." A rural county, according to the Relief Commission, is one in which there is no city of more than 5,000 population. There were 246,849 cases on the relief rolls of the Texas Relief Commission on September 20, 1934. A case may consist of one person or a family. The 246,849 cases were composed of about 1,000,000 individuals. The majority of relief cases were in rural rather than in urban areas. The Relief Commission did not have any figures showing how many of the predominantly rural cases were tenant farmers.[23]

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[21]See V. P. Lee, *Short-Term Farm Credit in Texas*, Texas Agricultural Experiment Station Bulletin No. 351, College Station, 1927, pp. 5–24, and Schwulst, *op. cit.*, pp. 98–115.

[22]Calvin B. Hoover, *Human Problems in Acreage Reduction*, Washington, 1934, pp. 3–5.

[23]Letter from Powell Pearson, Chief Statistician of the Texas Relief Commission, September 20, 1934.

IV

The system of tenancy that prevails in the cotton regions of Texas leads to poor and inadequate housing conditions. Most tenant homes are equipped with a few windows, but the lack of screens is noticeable in the summer months. Tenant houses are everywhere in bad repair, and almost no thought of sanitation has entered into the minds of the tenants or the owners. The landlord often believes that it is useless to provide good living quarters for tenants, for they will not take good care of them; and the tenant believes that it is useless to ask for good living quarters, for the landlord will not grant them. In many cases, the tenant house consists of two rooms with a back shed room that is used for a kitchen and dining room, and in some instances from five to ten people are housed in a building of this kind. Ill health and immorality are the results of our over-crowded tenant homes.[24]

The ignorance of the average tenant has hindered him from making greater economic and social progress. Large numbers of tenant farmers in Texas are very ignorant—ignorant of their legal rights, ignorant of their social and political responsibilities, ignorant of the proper use of farm machinery, ignorant of the importance of sanitation and its influence upon health. All these considerations lie at the basis of better economic and living conditions.[25] Also the extreme individualism of the average tenant has been an obstacle to his economic and social improvement. Many landlords tend to discourage the organization of tenants for coöperative enterprises as they wish to control the tenant and his crops. The tenant himself is responsible for much of his individualism. The shifting from one community to another makes organization difficult. The short term lease and the uncertainty of continuance on the same farm for more than a year cause the tenant to assume an indifferent attitude toward all efforts to organize coöperatively for economic and social purposes. In contrast with the development of a wholesome community spirit, tenancy lends encouragement to anti-social attitudes, and tends to produce economic and social conditions which are unfavorable to good schools.[26]

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[24]See W. B. Bizzell, *Farm Tenantry in the United States*, Texas Agricultural Experiment Station Bulletin No. 278, College Station, 1921, p. 273.

[25]*Ibid.*, pp. 47–48.

[26]See Sanders, *op. cit.*, p. 58, and White and Leonard, *op. cit.*, pp. 141–47.

V

Various instances of hardships to tenants occurred in connection with the 1933 and 1934 Government cotton acreage reduction programs, and a number of Texas tenants were partially or totally deprived of their rightful share of the economic benefits of these programs. According to Dr. Calvin B. Hoover, the division of the benefits paid by the Government as compensation for cotton plowed up in 1933 was apparently intended to be according to the interests which the landlord and the tenant had in the crop, although the contract for that year does not so specifically provide. By the terms of the contract, landlords were allowed to sign it both for themselves and for their tenants, but only after they had obtained the consent of the tenants. Checks for benefit payments were often made out in the name of the landlord alone. Whether the tenant received anything at all depended upon the charitableness of the landlord. In some cases the landlord received the tenant's share of the cotton option payment as well as his own.

The 1934 cotton contract provided that the landlord had the right to dispense with the services of any tenant who was a "nuisance" or a menace to the welfare of the producer, and some landlords took advantage of this provision of the contract to get rid of tenants. The share cropper was largely forgotten in the 1934 cotton contract, except for his share of parity payments.[27] The dominant figure in the cotton contract was the landowner who sometimes took the position that the share cropper was only an agricultural laborer paid in kind, and therefore should have no voice in deciding his own interests. Although some of the share renters, or "managing share tenants," were deprived of their benefit payments, in the main, they shared equitably with the landowners. A number of landlords, however, tried to assume the "managership" of their farms rented under the third-and-fourth custom, and thereby draw all the rental payments to themselves.[28]

VI

From the available evidence, it must be determined that the economic and social status of the Texas farm tenant, especially

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[27] Letter from T. C. Richardson, Associate Editor of *Farm and Ranch*, September 8, 1934.

[28] Richardson, *op. cit.*

the share cropper, is decidedly low, although it is somewhat better than it was in the depth of the depression. According to the editor of a leading Texas agricultural journal, farm tenants are less discouraged than they have been for several years, despite the fact that the drouth cut the yield and income of a large number of tenants.[29] Prominent agricultural and business leaders of the state have recently expressed the fear that if the present policy of restricted cotton production is continued, there is danger of Texas and other Southern states permanently losing their cotton markets to foreign producers.[30] The loss of our cotton markets to foreign producers would necessitate a drastic revision of the economic structure of Texas, and bring disaster to thousands of tenants.

Finally, it may be concluded that the economically submerged tenant population of Texas, composed of share tenants and share croppers, constitutes one of the major economic and social problems of the state. The fact that Texas and other Southern states have devoted their energies to the production of agricultural export commodities, especially cotton, which have been sold at a world price-level, while buying most of their manufactured goods from the North and East at high prices maintained by a high protective tariff, has prevented the improvement of the economic condition of the great mass of tenant farmers.[31] Until the United States abandons its policy of economic nationalism, and reduces appreciably its high protective tariff, the tenant farmers of Texas will continue to occupy a low economic and social position.

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[29] *Ibid.*

[30] *The Cotton Crisis* (Proceedings of Arnold Foundation Institute of Public Affairs, 1935), *passim.*

[31] See Molyneaux, *op. cit.*, p. 25.

THE COUNTY HOME RULE MOVEMENT IN TEXAS*

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I

The shortcomings of county government in Texas probably are not more serious than those which confront county government in the typical state. On the other hand, conditions at the level of the county in this state are not markedly better than those generally found. Thus it is that from time to time suggestions have been made for the reorganization of the structure of county government, which rests in its major features upon the state constitution, which in turn went into effect in 1876. The "movement" for county reorganization in times past has been content for the most part with occasional amendments or with random statutes, which have been almost entirely ineffectual.

Some five years ago, however, the friends of efficient county government inaugurated a move which bade fair to accomplish some measure at least of comprehensive reform. About 1930, agitation began to be heard for home rule for the counties, and this led in 1931 to the introduction in the Texas House of Representatives of a joint resolution calling for a home rule amendment to the constitution.[1] The resolution passed in the House but failed by one vote in the Senate. Introduced again in 1933, it passed both houses of the legislature and was approved by popular vote in a special election held August 26 of that year.[2] The legislature, an-

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[1]See Walter Beck's article, "A Home Rule Experiment in Texas," in XXXIII *National Municipal Review*, pp. 302–304. Mr. Beck has been closely allied with the county home rule movement in Texas since its inception and was prominent in the legislative skirmishes which preceded submission of the home rule amendment. His remarks, therefore, are not to be taken lightly. It may be noted, nevertheless, that while Mr. Beck identifies Fort Worth as the birthplace of county home rule, claimants from cities are widely separated as El Paso and Dallas insist that they were present at the time that movement came into being. On the whole it appears that Mr. Beck's account is correct in the main.

[2]As Section 3, Article IX of the constitution.

ticipating acceptance of the proposed amendment by the electorate, passed a preënabling act,[3] which was superseded by a second enabling act passed after popular approval of the amendment.[4] Thus, in the constitutional amendment and the (second) enabling act, was provided the legal authorization for county home rule in Texas.

The amendment in question is very long and detailed. Its more important provisions may be summarized briefly in the following manner:

1. Any county with a population of 62,000 or more may adopt a home rule charter. The state legislature may by a two-thirds vote authorize a county of less than 62,000 population to adopt its own charter.
2. A home rule charter may go into effect only if approved by the "resident qualified electors" of the county. In the election held on the charter the votes cast in incorporated areas and those cast in unincorporated areas are counted separately. Thus the county is divided into two electorates, *and both must approve the proposed charter before it may go into effect.* The legislature may overrule the provision for a separate count by a two-thirds vote.
3. A home rule charter may provide for the continuance of the present county commissioners' court or it may set up a new council. The council or commission may serve a term of two to six years.[5]
4. The charter may itself provide for the complete reorganization of the county's administrative set-up, or it may empower the governing body to make any changes in machinery which may seem necessary.
5. A home rule county may fix the maximum ad valorem tax rates to be set for specific purposes, though its aggregate rate may not exceed that specified for counties in the constitution.[6]
6. The county may borrow money. Its evidences of indebtedness and their supporting taxes "*constitute a first and superior lien upon the property taxable in such county.*"
7. The functions of any city, town, or district embraced within a home rule county may be transferred either in whole or in part to the county. Such transfers must be preceded by a popular vote; the

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[3]See Chapter 232, *General Laws of the Regular Session of the Forty-third Legislature.*

[4]See Chapter 91, *General Laws of the First Called Session of the Forty-third Legislature.* The second enabling act provides that all procedures taken under the first shall be considered correct and proper.

[5]The commissioners' court, which is the present "governing body" of the county, serves for a two-year term.

[6]At present the constitution limits the county tax rate to ninety-five cents on the hundred dollar valuation. This is distributed as follows: (1) general purposes, 25c; (2) road and bridge fund, 30c; (3) jury charges, 15c; and (4) permanent improvements, 25c.

voters of the yielding area must approve the arrangement by a two-thirds vote, those outside that area by a majority vote. Again the legislature may, by a two-thirds vote, overrule the provision for a separate count.

8. "In order to increase governmental efficiency and effect economy the county may contract with the principal city of the county to perform one or more of its functions, provided such contracts shall not be valid for more than two (2) years."

9. An unincorporated area which is eligible to incorporate under the laws of the state may be set up as an urban area by the county's governing body, which thereupon may exercise such functions as the area might enjoy were it incorporated.

10. Except in certain specific directions, which relate chiefly to the administrative duties of judicial agents, the courts may not be touched by a home rule charter.

11. A home rule charter must make provision for its amendment. No amendment may be passed without the approval of the voters of the county.

The enabling act outlines the procedure which must be followed in adopting a home rule charter. Its provisions are of little importance for present purposes. It need be noted at this point only that the act specifies, first, that no proposal to consolidate or merge the government of any embraced jurisdiction with that of the county may be voted on in the charter election, and second, that in any county where a home rule charter is defeated no similar proposal may be initiated until one year has passed.

II

The population limit stipulated in the amendment restricts home rule (without sanction by two-thirds vote of the legislature) to thirteen counties. Several of these expressed an interest in the matter while home rule was under consideration in the legislature; and as soon as the amendment became effective home rule enthusiasts busied themselves in half a dozen counties. The first move of practical importance was made in El Paso county, where, only a few weeks after popular approval of the amendment, those desirous of reform drafted and began to circulate the petition required to set the home rule machinery in motion. In the course of time a charter drafting commission, which included among its members some progressive and capable persons, was appointed. This body, after labors which extended through several months, produced a charter which, while in good part the product of compromise, proposed what was by common consent a distinct improvement over the existing government. It provided for a county

executive chosen by popular vote and for a board of four commissioners, residing one in each of four districts but elected at large.[7] The executive was to preside over the board as chairman with a vote on all questions. Moreover, his powers of direction, appointment, and removal were broad. Not least important among the provisions of the charter were those which related to the civil service commission and the merit system, which it was proposed to install.

No sooner had the terms of the charter been made public than a vigorous campaign was launched against it. Its protagonists answered the challenge by organizing under a "Committee of 100," which assumed direction of the charter campaign. The arguments employed on both sides were those so familiar to students of government: the contest developed nothing more novel than the claim of increased efficiency on the one side and the charge of "autocracy" on the other. Withal, however, the issue was closely fought, the contestants providing in vigor and aggressiveness whatever they may have lacked in ingenuity.

It became apparent early in the campaign that the major difficulty to be overcome was rural fear of urban domination. Proponents of the charter sought to dispel this fear on every occasion, and the press joined almost unanimously in the effort. The attempt was largely unsuccessful, however, as an analysis of the popular vote on the charter will reveal. Submitted on May 12, 1934, it was approved in the City of El Paso by a vote of 3,309 for to 2,166 against. Outside the city the vote was 761 for and 1,609 against. Thus the urban majority for the charter approached 1,200 votes, while the county-wide majority was almost 300. Notwithstanding this general approval, the charter failed of adoption, thanks to the provision of the amendment which requires majority votes in the incorporated and the unincorporated areas voting separately. Those who supported the charter did not hesitate to charge its defeat to the "controlled Mexican vote from the rural precincts down the river."

Travis county, in which is located the capital city of Austin, followed hard after El Paso. The home rule movement assumed form here in February, 1934, with the circulation of the required petitions. In due course a charter commission was named. The movement was under a cloud from its inception, owing to charges

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[7]Several members of the charter commission favored the county manager plan, and accepted the system here described only as a necessary compromise.

and counter-charges which involved an alleged effort to create a county political machine of those on the relief rolls. There was also the possibility that procedural defects prior to the organization of the commission would prove sufficient to undermine the whole movement. The first act of the commission, therefore, was to appoint a committee to determine the legality of past procedures and the status of the commission itself. The committee consulted the Attorney General of the state on the points involved, then found itself in the anomalous position of disagreeing with the opinion of that official.[8] Whatever the merits of the controversy, it seemed clear that there was serious question concerning the status of the commission. That body, having no desire to draft a charter which would certainly be attacked on the ground of procedural defects, agreed to take no further action. Hence the home rule movement in Travis county died aborning.

In Tarrant county, where home rule is said to have had its birth, a charter movement was launched early in 1934. There the county convention allegedly fell under the control of a political faction which was not in sympathy with the movement. Thus those who were desirous of drafting an acceptable charter retired and left the field to their adversaries, who drafted a charter to their own liking. Eventually this charter was placed before the county commissioners' court in accordance with the law. That body proceeded to the performance of its duties by ignoring the charter, perhaps to the satisfaction of all concerned. Observers agree that those who drew up the document are satisfied with the present government and so are content to let the charter die; there is little question but that those who favor reform consider the existing government almost if not quite as good as that proposed in the

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[8]The enabling act provides that in the county convention which meets to select the charter commission all votes other than those on organization shall be by written ballot. The minutes of the Travis county convention did not show specifically that the size of the charter commission was determined by such ballot. Further, the statute is so worded as to permit the interpretation that the minutes of the convention must be accepted by that body. The minutes presented to the commission did not show either that they had been so accepted or, indeed, that the convention had ever formally adjourned. The Attorney General was of the opinion that neither of these defects would prove fatal. The commission's Legal Status Committee differed with him on both points.

charter, and so likewise are content for the time being to let the whole matter drop.[9]

In Bexar county the advocates of reorganization began the prescribed procedure early in 1934. Numerous shoals and reefs beset the path of home rule from the beginning. Eventually a charter commission was appointed, though the personnel was not satisfactory to those who had been active in the movement earlier. The commission pursued its duties in so halting a fashion that the time allowed for drafting a charter expired before anything of a tangible character was accomplished.

In Dallas and Harris counties petitions were circulated early in 1934. When they were presented to the commissioners' court, however, they were found to contain an insufficient number of valid signatures. Those who had been active in advocating home rule refused to continue in the face of the evident lack of interest and simply neglected to take up the matter again.

In several other counties, notably McLennan, Galveston, and Hidalgo, some home rule gestures have been made. In none of these, however, has the movement reached the point where petitions have been drawn and circulated. In one or two counties of less than 62,000 population a few lame steps have been taken in the direction of obtaining legislative authorization for home rule, but in none have these steps proved effectual.

County home rule in Texas thus has amounted to little more than constitutional authorization. Only one county has proceeded to the point of drafting a charter. In three others charter commissions either have felt it futile or have refused to discharge the duties placed upon them. In two the movement has died from evident lack of interest. In half a dozen others agitation for reorganization has been confined to a few small and unenthusiastic voices. In short, county home rule appeared much more attractive in Texas in the anticipation than in the realization. It remains now to analyze the situation and to ascertain, in so far as this may be possible, why this has proved to be the case.

III

The difficulties under which county home rule has labored in Texas may be grouped into three categories. First, there are some

[9]The commissioners' court doubtless could be mandamused to call an election as required by law, but no one has been sufficiently interested to seek this remedy for the impassé.

defects which are inherent in the amendment and the enabling act; second, there are certain arguments, plausible and to some extent logical, which may be urged against home rule on the basis of the provisions of the amendment and the statute; and third, there are the many factors which operate against acceptance of any proposal which departs from the beaten path. These may be examined briefly in turn.

Among the shortcomings of the amendment and the supporting statute may be observed first the fact that both are unduly long, wordy, detailed, and repetitive. The amendment contains some 3,000 words, while the enabling act runs to more than 7,500 words. It is obvious that no such vast verbiage was necessary to extend the right of home rule to Texas counties. As regards the amendment in particular it is interesting to note that the home rule amendment for Texas cities comprises less than 250 words.[10] With reference to the statute it is sufficient to observe that it repeats many phrases and several paragraphs of the amendment, and that it goes not only unnecessarily but disadvantageously into detail. It will be recalled that the failure to follow exactly the statutory procedure brought about the downfall of home rule in Travis county.[11] In sum, the amendment contains much statutory material; the statute incorporates much that should have been left to administrative rules or ignored entirely.

Second, the law in question, both constitutional and statutory, is more than a little obscure in its meaning. To illustrate, the amendment provides that " . . . the county may contract with the principal city of the county to perform one or more of its functions, . . ." The question which immediately arises is, what is the antecedent of the word *its*? In conference with a group of persons interested in the subject, one of the original sponsors of the amendment identified first *county* then *principal city* as the antecedent, finally conceding that he had not the faintest idea what the amendment meant, though he had a very definite understanding of what it was intended it should mean. Unfortunately, the instance cited is not unique.

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[10] *Constitution of the State of Texas*, Article XI, Section 5.

[11] It is perhaps the irony of justice that the lawyers who inaugurated the home rule movement in Travis county, and who "ran" the county convention, found it difficult to comply with the specifications written into the statute by their lawyer peers in the legislature.

Third, both amendment and statute reveal the heavy hand of compromise at every semi-controversial turn. For instance, to get home rule through the legislature it was necessary to give the inhabitants of the rural areas power to reject any charter drafted. Thus was inserted the provision which calls for acceptance of a home rule charter by each of two electorates. It was this requirement which resulted in the defeat of the El Paso charter, notwithstanding the proposed new government was approved by a substantial majority of the voters of the county. There seems to be no reason in logic for requiring separate votes.

Fourth, the amendment contains several specifications which may be ignored with the approval of two-thirds of the legislature. If it was desirable that these provisions be included originally, no reason appears why the legislature should have power to authorize their being ignored; moreover, if the legislature be conceded this authority, no good reason appears for requiring a two-thirds vote of that body.

Fifth, the amendment specifies that the evidences of indebtedness of the county and their supporting taxes ". . . shall constitute a first and superior lien upon the property taxable in such county." This provision was interpreted in some quarters as a requirement that debt service charges must be met before the general purposes of government might be pursued. It is entirely probable that it was not the intention of those who drafted the amendment to write into it this proviso; indeed the text of the section in which it appears would seem to suggest a contrary interpretation. It is not to be doubted, however, that a strenuous effort would be made to read into the section the meaning given statement above in the event that a county should adopt a home rule charter.

First among the obstacles of the second category is an argument which rests upon the question of the maximum ad valorem tax rate. The amendment provides that although the home rule county shall remain bound by the limit on the aggregate tax rate set in the constitution, it may fix its own maximum rates for taxes laid for specific purposes. Opponents of home rule immediately seized upon the opportunity offered by this section, charging that it sought to destroy the constitutional maximum rate. In fact, it of course does no such thing. It does, however, destroy the specific purposes rates limits, with the effect that all of the county's income presumably might be turned to one end at the expense of all

other purposes. Moreover, if the governing body should elect to spend most or all of the ninety-five cents allowed for, say, roads and bridges, the county would be contributing more to what might be called a state function than a neighboring county which, in the absence of a home rule charter, would be limited to thirty cents for this purpose. The argument appears clear enough: it requires no elaboration.

A second obstacle is found in the amendment's authorization of a merger of city and county. The opponents of home rule argued that such a merger would result in transferring the debt which now rests exclusively upon the city to the whole county, and this in turn would necessitate an increase in the county's tax rate, in some instances probably of more than 100 per cent. Moreover, it is notorious that the city generally taxes property on a higher valuation than does the county. Almost of a necessity, therefore, valuations throughout the county would be raised until they approximated those currently found only in the city. Thus would the rural districts suffer in two ways: first, the tax rate would be raised, and second, property valuations would be increased. Further again, since the state tax is collected on the basis of the county's valuations, the home rule county with higher valuations than surrounding counties (operating under the old constitutional provisions) would contribute more to the state's exchequer than its neighbors. These last arguments are somewhat far-fetched in the view of the position occupied by county home rule in this state, but they were used and used effectively by those who desired to maintain the status quo in county government.

Among the difficulties of the third class, those which arise from the existence of powerful vested interests are greatest. The county is notorious as the greatest remaining stronghold of spoils politics. The simple truth is that any proposal for the reorganization of county government strikes or may strike at the root of the material well-being of a considerable portion of the county's inhabitants, and that home rule has as yet commanded the support of no group with the influence, the money, the organization, and the solidarity to overthrow the machine (or machines) of the county officeholders.

A second hazard from which county home rule in this state failed to escape is found in the familiar and apparently ever-present urban-rural conflict. The rural dweller lives in constant

dread lest advantage be taken of him by the townsman, and he safeguards his position with a jealousy and tenacity wholly out of keeping with the realities of the supposed clash of interests. The home rule amendment, openly recognizing as it does this seeming conflict, performs thereby small service in the cause in which it presumably is primarily interested. In truth, the amendment plays directly into the hands of the county officeholders and more particularly of the county commissioners, who are almost by definition usually local (precinct) politicians and who therefore are given the power to defeat any charter drafted.

In the third place should be noted the popular tendency to confuse county reorganization with city-county merger. The latter is nothing more than a remote possibility which is recognized in the amendment, and safeguards more than adequate are thrown around the "yielding" jurisdictions. Notwithstanding these facts, a large proportion of the population of any county in which home rule might be up for discussion labored under the delusion, from which they refused to be divorced, that the amendment called for complete and undelayed consolidation of the county and its major city or cities. The predilection for this misunderstanding, almost universally existent, placed in the hands of the county politicians another weapon which they were not slow to use.

Finally must be mentioned the familiar popular lethargy, which nowhere in this state has been more evident of recent years than in connection with the county home rule movement. This fact is not deserving of elaboration. It is sufficient to note simply that very few people have interested themselves in the reorganization of county government, and that any opportunity offered by home rule for the reform of the present system has been very largely ignored. Here lies what is unquestionably the chief obstacle to the achievement of noteworthy change, and here is the most distressing fact brought to light by the county home rule movement in Texas.

In conclusion, it may be observed that while the amendment and the supplementary statute leave much to be desired, they also include some praiseworthy features. The least that can be said for them is that, poorly planned and drafted though they be, they afford the opportunity for a rather drastic reorganization of county government in Texas. It is doubtful whether a structure

satisfactory in every detail could be devised on the basis of the present authorization. It is beyond question, however, that the instruments with which to forge a reasonably adequate system of county government lie ready to hand whenever the people of this state may choose to seize and use them.

THE CASE OF TEXAS v. WHITE RECONSIDERED WITH SPECIAL REFERENCE TO THE DOCTRINE OF POLITICAL QUESTIONS

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It is commonly believed that when an American court "is confronted with a case involving a political question it will look to the political branches of the government to learn what the view is which those departments have expressed. When that view is ascertained, the courts will act in conformity with it."[1] This is largely true, but *Texas v. White*[2] offers one instance, if one examines both majority and minority opinions realistically, in which the general rule does not satisfactorily apply.

Congress, by act of September 9, 1850, offered the State of Texas in compensation for her claims connected with the settlement of her boundaries and other disputes,[3] ten million dollars in 5 per cent bonds, each for the sum of one thousand dollars. This offer was accepted by the State; subsequently, one-half of the bonds were delivered to the State, while the other half remained in the national treasury.

The bonds were received on behalf of Texas by the Comptroller of Public Accounts under authority of an act of the legislature which, besides granting that authority, provided that no bond should be available in the hands of any holder unless endorsed by the governor. With the outbreak of the rebellion, however, the revolutionary legislature of Texas promptly repealed the act requiring the signature of the governor to validate the bonds, and, on the same day, made provision for the organization of a Military Board, composed of the governor, the comptroller, and the treasurer, and authorized a majority of that board to provide for the defense of the State by means of any bonds in the State treasury, upon any account, to the extent of one million dollars. The defense intended by this act was to be made against the United States. Under this authority the Military Board entered into an agreement with G. W. White and others, who, in return for one

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[1] Oliver P. Field, The Doctrine of Political Questions in the Federal Courts. 8 *Minnesota Law Review* 485.

[2] 7 Wallace 700.

[3] *Congressional Record*, 38th Cong., 1st sess., Chap. 49.

hundred and thirty-five of the above-mentioned bonds, were to deliver to the board certain quantities of cotton cards and medicines. Subsequently, the one hundred and thirty-five bonds were delivered to White, none of which bore the signature of the governor.

With the close of the war, Texas was without any organized civil government recognized by the government of the United States. The President, therefore, by virtue of his military powers, instituted a provisional government and appointed a provisional governor. A new constitution was adopted, and under the new instrument a governor and other state and national officers were elected by the people. However, the duly elected senators and representatives to the national government were denied their seats in the Congress. Furthermore, it was decreed that no legal governments existed in any of the previously rebellious states. By the same acts these states were grouped into five military districts, each under the supervision of a general appointed by the President.[4] Thus, each of the former Confederate states was reduced to a position of abject subordination to the national government, each lacking those qualities and characteristics indicative of a state as a member of the Union.

In 1868, Texas, claiming the bonds in question as her property, sought an injunction in the Supreme Court to restrain the defendants from receiving dividends from the national government. Texas, besides, sought to compel the surrender of the bonds to the State.

The defendants maintained first, that sufficient authority had not been shown "for the prosecution of the suit in the name and on behalf of the State of Texas,"[5] and second, that since the State had severed her relations with the Union, her status was so altered as to render it incompetent to bring suit in the federal courts. The first contention was disproved to the satisfaction of the Court, the solicitors having been authorized by proper and lawful authorities to prosecute the suit.[6] The second allegation, as to the jurisdiction of the Court, received more attention, for if, said Chief Justice Chase, "the State of Texas was not at the time of filing this bill, or is not now, one of the United States, we have no jurisdiction of this suit and it is our duty to dismiss it."[7]

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[4]See Reconstruction Acts, 14 Stat. L. 428; 15 Stat. L. 2; 15 Stat. L. 30.
[5]7 Wall. 719.
[6]*Ibid.*
[7]*Ibid.*

Irrespective of secession and rebellion, when Texas was admitted to the Union, said Chase, "she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The Act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final."[8] But, in order to sue in the Supreme Court, it was necessary that there be a state government "competent to represent the State in its relations with the national government so far at least as the institution and prosecution of a suit is concerned."[9]

It will be remembered that at the end of the war the government of Texas was non-existent, that is, there was no government maintaining constitutional relations with the Union. Consequently, under Article 4, Section 4, of the Constitution, it was incumbent upon the Congress to effect the institution of a republican form of government in the State. But, instead of reëstablishing governments republican in form in the ex-Confederate states, Congress passed the three Reconstruction Acts which swept away the existing state governments and grouped the hitherto rebellious states into five military districts "subject to the military authority of the United States."[10] Thus, the provisional government under the authority of which the bill in the case of *Texas v. White* was filed, was alleged to be illegal.

But the Court held otherwise. Quoting the *dictum* laid down in *Luther v. Borden*,[11] that "Congress must necessarily decide what government is established in the State, before it can determine whether it is republican or not,"[12] Chief Justice Chase held that Congress had decided the question with respect to Texas with the passage of the Reconstruction Acts. "It is important to observe," said Chase, "that these Acts themselves show that the governments, which had been established and had been in actual operation under executive direction, were recognized by Congress as provisional, as existing, and as capable of continuance,"[13] with

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[8] *Ibid.*, 726.

[9] *Ibid.*, 726–727.

[10] This did not include Tennessee. See 14 Stat. L. 364.

[11] 7 Howard 1.

[12] *Ibid.*, 42.

[13] 7 Wall. 731.

the result that the Court held the suit to have been instituted by proper authority.

Justice Grier in his dissenting opinion maintained that Texas was not a state of the Union. He said: "Is Texas a state, now represented by members chosen by the people of that State and received on the floor of Congress? Has she two Senators to represent her as a state in the Senate of the United States? Has her voice been heard in the late election of the President? Is she not now held and governed as a conquered province by military force? The Act of March 28, 1867, declares Texas to be a 'Rebel State,' and provides for its government until a legal and republican state government could be legally established. It constituted Louisiana and Texas the 5th military district, and made it subject, not to the civil authority, but to the 'military authorities of the United States.' It is true," Justice Grier continued, "that no organized rebellion now exists there, and the courts of the United States now exercise jurisdiction over the people of that province. But this is no test of the State's being in the Union; Dakota is no state, and yet the courts of the United States administer justice there as they do in Texas. The Indian tribes, who are governed by military force, cannot claim to be states of the Union. Wherein does the condition of Texas differ from theirs?"[14] Furthermore, Justice Grier was of the opinion that Congress had decided that Texas was not a state. "I do not consider myself bound," he said, "to express any opinion judicially as to the constitutional right of Texas to exercise the rights and privileges of a state of this Union, or the power of Congress to govern her as a conquered province, to subject her to military domination, and keep her in pupilage. I can only submit to the fact as decided by the political position of the government; and I am not disposed to join in any essay to prove Texas to be a state of this Union, when Congress have decided that she is not."[15]

Congress—and it is the duty of the legislative department to decide what government is established in a state, and that in common constitutional parlance, this act of recognition is a political act and not within the jurisdiction of the courts—was opposed to the recognition of any of the provisional governments. The preamble of the first Reconstruction Act specifically stated that "no

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[14] *Ibid.*, 738.
[15] *Ibid.*, 739.

legal state governments or adequate protection for life or property now exists in the rebel states," and that "it is necessary that peace and good order should be enforced in said states until loyal and republican state governments can be legally established."[16] This act, also, enumerated the conditions upon which the rebel states should be entitled to representation in Congress. Furthermore, Texas was not readmitted into the Union until 1870, and this was done by act of Congress.[17] The preamble of the admitting act stated that the "people of Texas have framed and adopted a constitution of state government which is republican."[18]

Thus, it does not seem unreasonable to conclude that, at the time of *Texas v. White*, the attitude of Congress was ignored by Chase and the majority associates, and that it was not Congress but the Supreme Court, a non-political department, which had decided the political question. The Supreme Court was cognizant of the fact that in keeping with precedent it could not decide the question whether or not a state government existed in Texas which was privileged to bring suit before the Court. Yet, paying lip-service to the doctrine of political questions, it decided that the government of Texas was privileged to sue and that because Congress in passing the Reconstruction Acts had recognized the provisional government as established.

It may be of advantage in understanding this case to refer to a letter written by Chase to John Russell Young.[19] Here Chase said: "I start with the premises that Congress has full power to govern the rebel states until they accept terms of restoration which will insure future loyalty, the fulfillment of national obligations, the repudiation of all rebellion and the obligations of rebellion; and the security of all rights for all men; and that the acts of Congress must be construed with reference to these ends, liberally"; but, continued Chase, "I don't want to see Congress set aside the provisional state governments. It would be a very mischievous measure in its effects on private rights, and lead to much litigation, and very seriously retard, I fear, the restoration of order and prosperity to the South. Congress may well provide that the military commander may remove state officials who put

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[16]14 *Stat.* L. 428.

[17]16 *Stat. L.* 80.

[18]*Ibid.*

[19]In Robert B. Warden, *An Account of the Private Life and Public Services of Salmon P. Chase*, 667.

themselves in the way of reconstruction; and that their successors may be elected by *universal suffrage,* but I would not have military commanders authorized to appoint their successors, unless temporarily . . ."[20] In another communication, this time to August Belmont, Chase said: "I would eradicate if possible every root of bitterness. I want to see the Union and the Constitution established in the affections of all the people, and I think that the initiative should be taken by the successful side in the late struggle."[21] Supposing the Supreme Court had decided that the provisional government as representing Texas was not privileged to bring suit in the Supreme Court? The Court then would have subscribed, or voiced approval, of either the "State Suicide" theory of Sumner, the "Conquered Province" theory of Stevens, or the "Forfeited Rights" theory.[22] And it may be questioned whether, in Chase's mind, judicial approbation, particularly the approbation of the highest court in the land, of the military courts and military governments, bizarre travesties of representative government, not to mention governmental corruption and maladministration, would have furthered the restoration of "order and prosperity to the South."

Thus, it is, perhaps, not improper nor unreasonable to conclude that Chase and the majority associates wished to attain certain results, a certain state of things born out of practical considerations. At least it would seem that the Court desired to rescue the old Confederate states from a position of legal inferiority, and as the letters of Chase indicate, accelerate rehabilitation of the political, social, and economic activities of the Southern states. And Texas recovered from White and others the bonds which had been utilized in waging a rebellion against the authority of the United States.

The question of the status of the Southern states during the reconstruction period was presented to the Supreme Court in the case of *Texas v. White.* "The question, in my judgment," said Justice Swayne, who, with Justice Miller, concurred with Justice Grier, "is one in relation to which the court is bound by the action

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[20]*Ibid.*, 667–668.

[21]In Jacob B. Schuckers, *The Life and Public Services of Salmon Portland Chase,* 586.

[22]See Westel W. Willoughby, *The American Constitutional System,* 88–89.

of the Legislative Department of the Government."[23] But, in this case, the majority ignored "the action of the Legislative Department" and decided the question which, according to constitutional theory and general practice, lies without the jurisdiction of the courts.

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[23]74 U. S. 243.

THE LEGAL STATUS OF "PRIVATE" ORGANIZATIONS EXERCISING GOVERNMENTAL POWERS

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Though schemes of professional and business self-government adumbrated by much of the so-called New Deal legislation may well prove abortive, there is ample evidence to be found in existing American legislation that the participation of business and professional groups in public administration is already well established in our policy.[1] In general it may be said that such legislation falls into two classes: (1) statutes permitting "private" groups to exercise or share in the appointing power in connection with the constitution of certain public boards and commissions; (2) statutes directing various public authorities to adopt and enforce certain standards worked out by similar "private" groups and associations. Since private rights of various sorts are often involved in the exercise of such powers a review of the adjudicated cases may be useful.

It will be well to cite briefly examples of both classes of statutes so as to have before us typical situations giving rise to litigation. With regard to the first-named group of statutes, thirteen states have conferred upon their state medical societies the privilege of submitting to the governor a list of names from which that official must appoint to the state's medical examining board. The same arrangement exists for pharmacists in 22 states, for dentists in 18 and for optometrists in eleven. With regard to the second group, the statutes often direct certain officials to act in conformity with standards of competence elaborated by similar "private" associations. Thus in Kansas, the State Board of Administration in admitting persons to the practice of accountancy is required to apply standards which "shall conform as far as possible to the standards approved by the American Association of Public Accountants."[2] Other examples are found in the New York law regulating the practice of chiropody which provides that "proof of non-compliance with the rules as to the use of antiseptics

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[1]State legislation admitting professional groups to a share in public administration is reviewed by the present writer in an article to appear in a forthcoming number of *Social Forces*.

[2]*Revised Statutes of Kansas, 1923, Sec. 1–102.*

promulgated by the Pedic Society of New York shall be presumptive evidence of malpractice in any suit for damages"[3] and in statutes such as those of Oklahoma and New Mexico directing that no one shall be admitted to the practice of medicine except graduates of colleges having the requirements prescribed by the Association of American Medical Colleges or the Southern Association of Medical Colleges.[4]

Statutes of this character have been attacked on various grounds before the state courts. Objection has frequently been based upon different notions of the appointing power, these notions often arising from strict views of the doctrine of separation of powers. In 1891 the Ohio court had before it a statute which provided that county election officials should be appointed by the probate judge from persons recommended by the executive committees of the political parties in the county. It was held that mandamus would lie to compel the appointments to be made against the contention that the appointing power belonged to the executive branch and could not be conferred elsewhere by the legislature.[5] An early statute of New York empowered the Commissioners of Pilots of New York City to recover penalties provided by the act for the employment of unlicensed pilots. In the Court of Appeals it was objected that the law gave appointing power to a body not representing nor responsible to the people since the Board of Commissioners was chosen by the Chamber of Commerce and certain officers of the marine insurance companies represented on the board of underwriters of the city. The court held that since the constitution was silent on the question it would not recognize any such implied limitation on the power of the legislature.[6] In 1910 the Appellate Division of the New York Supreme Court had before it an appeal from a prosecution by the State Board of Pharmacy of an unlicensed pharmacist. The state Board

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[3] *Laws of 1927, Ch. 85.*

[4] *Okla. Comp. Stats.*, Sec. 8803; *New Mex. Stats.*, 1915, Sec. 4585; Cf. *Comp. Laws of S. D., 1929*, Sec. 7722 (osteopaths); *Ariz. Rev. Stats.*, Sec. 2592; *Fla. Comp. Gen. Laws*, 1927, Sec. 4056; *Gen. Laws of R. I.*, 1923, Sec. 3428; *Gen. Laws of Mass.*, 1921, Ch. 13, Sec. 26 (all applying to veterinarians). For other examples in recent legislation see J. P. Chamberlain, "Democratic Control of Administration," *XIII Journ. American Bar Association* 186–8 (1927).

[5] *State v. Finger*, 48 Oh.St. 505, 28 N.E. 135. Cf. *Riggin v. Lankford*, 134 Md. 146, 105 Atl. 172 (1918).

[6] *Sturgis v. Spofford*, 45 N.Y. 440 (1871). Cf. *Commonwealth v. Ricketson*, 5 Metc. (Mass.) 412 (1843).

was created by permitting pharmacists generally and the members of certain incorporated associations to choose its members, the state being divided into three districts for this purpose. The defense contended that this mode of choosing the board was void since the constitution required officers to be elected or appointed as the legislature might direct. The court held, on the authority of *Sturgis v. Spofford*, that this provision did not apply, the word "election" being used in the constitution in a different sense.[7] A statute of Missouri provided that in appointing the Board of Examiners of Barbers in cities of over 50,000 population the governor should act on the recommendations of the State Barbers' Protective Association, the Boss Barbers' Protective Association and the Journeymen Barbers' Union. It was objected that this method of appointment interfered with the division of powers between the legislative and executive branches of the government because action by the unions was a condition precedent to the right of the governor to appoint and it was asserted that it might in effect repeal the law because the unions might fail to act. This contention was rejected by the court which said that if the act were unconstitutional as limiting the governor's power, he alone could object. Further, since the constitution allowed the legislature to provide for the appointment of officers not provided for by the constitution it was competent to make this arrangement and none of the constitutional prerogatives of the governor were infringed.[8]

On the other hand it has been held that the appointing officer may not be compelled to name a certain person to office on the recommendation of a private association when only one name is presented and he is thus deprived of all discreton in the matter. Appointment in such cases was held to be not a merely ministerial act and the recommendation was advisory only. "To appoint without discretion would be a mere ministerial act and entirely

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[7] *State Board of Pharmacy v. Bellinger*, 122 N.Y.S. 651 (1910).

[8] *Ex parte Lucas*, 160 Mo. 218, 61 S.W. 218 (1901); *In re Campbell*, 197 Pa. St. 47 Atl. 860 (1901) upheld a statute providing that the governor should appoint three medical examining boards from the membership of the three state medical societies. In *Titus v. Sherwood*, 81 Kans. 870, 106 Pac. 1070 (1910), it was held that mandamus would not lie at the suit of a private person to compel the president of the state association of miners to convene the delegates for the purpose of choosing a successor to the recently retired State Inspector of Mines who, under the statutes, was the person chosen as Secretary of the state association of miners. Such suit, the court said, would have to be brought in the name of the state.

takes away the essential element of an appointment which is but a substitute for an election."[9] And in Florida the legislature has been denied the power to associate with the governor the state chiropractors' association in the apointment of the Board of Chiropractic Examination. The state constitution contains a provision to the effect that the legislature might provide for the election by the people or appointment by the governor of all officers not otherwise provided for by the constitution. The statute provided that the governor might appoint the three members of the board from a list of ten submitted by the association. "To a certain degree," the court said, "this empowers the Florida Chiropractors' Association to share with the governor the appointing power which is lodged solely in him by the constitution." Because of this invasion of the governor's appointing power the statute was held void.[10]

Although, as will be pointed out later, similar statutes have been held void on other grounds, there is little doubt that the appointing power is not attached exclusively to the chief executive but that the legislature may associate "private" groups with the governor in performing this function or even confer it directly on such groups. The present law was well stated by the Supreme Court of Tennessee in an opinion written in 1910: "Whatever may have been its nature theoretically, in practical application in this country this power has not been considered as belonging to either of the departments, nor any general rule observed in vesting it. It will hardly be found vested in the same way in the fundamental law of any two of the states. In every case involving the right of its exercise by a particular department, courts are necessarily to be governed by the special provisions of the constitution of the state where the question arises. We think it is . . . now established . . . that the power of election or appointment to office is a political power, not inherently legislative, executive, or judicial, but which may be vested with equal propriety in either of them."[11]

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[9] *In re Kane*, 129 N.Y.S. 380 (1911).

[10] *Westlake v. Merritt*, 85 Fla. 28, 95 So. 662 (1923).

[11] *Richardson v. Young*, 122 Tenn. 471, 125 S.W. 664. ". . . no executive or administrative authority has any inherent power of appointment in the absence of legislation to that effect and . . . in the absence of a constitutional provision, the legislature may . . . grant the power of appointing public officers to any authority in the government or even to a private corporation." F. J. Goodnow, *Principles of the Administrative Law of the United States*, p.

The most frequent objection to the use of private groups in public administration, of course, is that such action by the legislature amounts to an invalid delegation of legislative power. The early history of rule against the delegation of legislative power is full of difficulties, but it was established quite early in our jurisdiction. An early case in which the conventional point of view of the courts was clearly stated was *Ames v. Port Huron Log Driving and Booming Company.*[12] Here the statute had given booming companies power to remove obstructions in rivers and charge the expense to the owner of logs, enforcing this claim by a lien on the logs. The court held to the view that such power if exercised at all must be wielded by a public officer and that since public office could be obtained only by election or appointment the statute was void.[13] The courts generally, however, while giving lip-service to the maxim *potestas delegata non potest delegari,* have permitted a rather extensive resort by the legislature to the passage of acts conferring wide rule-making powers upon executive officers and other persons and bodies of special competence. On the whole the federal courts seem to have been more liberal in this respect than those of the states.[14]

A law typical of those making use of private groups in public administration was the Boston ordinance of 1926 creating a Board of Zoning Adjustment. The ordinance provided that the board should be composed of the chairman of the city planning board and eleven other persons appointed by the mayor on nomination of the Associated Industries of Massachusetts, the Central Labor Union, the Real Estate Exchange, the Society of Architects, the

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253. Cf. *Overshiner v. State,* 156 Ind. 187, 59 N.E. 468 (1901); *French v. State,* 141 Ind. 618, 41 N.E. 2 (1895); *Davis v. State,* 7 Md. 151 (1854).

[12]11 Mich. 139 (1863).

[13]Cf. *Ohio and M. Ry. Co. v. Todd,* 91 Ky. 175, 15 S.W. 56 (1891); *Rouse v. Thompson,* 228 Ill. 522, 81 N.E. 109 (1907); *People v. Bennett,* 29 Mich. 451 (1874).

[14]*Buttfield v. Stranahan,* 192 U.S. 470 (1904); *Union Bridge Co. v. U. S.,* 204 U.S. 364 (1907); *St. Louis I. M. and S. Ry. Co. v. Taylor,* 210 U.S. 281 (1908). Cf. J. P. Comer, *Legislative Functions of National Administrative Authorities* (1927); P. W. Duff and H. E. Whiteside, "Delegata Potestas non Potest Delegari," *XIV Cornell Law Quarterly,* 168–196. "In the state courts a fundamentalist attitude toward the constitutional dogma has at times blocked legislative experimentation in delegation." Eleanor Bontecou, article on Delegation of Powers, in *Encyclopedia of the Social Sciences.* The rather confused state of the decisions with regard to the application of the doctrine is commented on in an unsigned note in 32 *Columbia Law Review,* 80–93 (1932).

Master Builders' Association and similar local bodies. When the ordinance reached the court the contention that there was an attempted invalid delegation of legislative power was rejected, the court remarking that "a statute designed to secure men of eminent sagacity for the performance of these duties is entitled to every presumption in its favor."[15] The same attitude has been taken in other cases involving the appointment of such authorities as examining boards. Thus a Maryland act was sustained providing for two medical boards to be named by the Medical and Chirurgical Faculty of the State and the Maryland State Homeopathic Society.[16] In 1873 the California court sustained an act providing that fire commissioners in cities might be named by the board of underwriters, and this decision became the authority for upholding acts making similar arrangements for the constitution of examining boards for physicians and architects.[17] In 1915 the Maryland court held that mandamus would issue to compel a county board to appoint as game warden a person recommended by the County Game and Fish Protective Association.[18] By statute the Alabama Medical Association is made the state board of health. In a proceeding to restrain payment of the board it was alleged that this was an unconstitutional delegation of legislative power. In *Parke v. Bradley* the court rejected this contention, saying that "the state has availed itself of a ready-made organization of professional and practical medical scientists and has by legislation converted it bodily into a state board of health and to this board, not to the state medical association the legislature has granted authority and jurisdiction."[19]

On the other hand, under some circumstances the argument that legislative power has been delegated has been upheld by the courts. An interesting case arose in Oregon in 1920. A statute

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[15]*Bradley v. Board of Zoning Adjustment*, 255 Mass. 160, 150 N.E. 892 (1926). The opinion collects examples of similar statutes in Massachusetts and other jurisdictions.

[16]*Scholle v. State*, 90 Md. 729, 46 Atl. 326 (1900) on the authority of *Regents of the University of Maryland v. Williams*, 9 G. and J. 365 (1838).

[17]*In re Bulger*, 45 Cal. 553. Cf. *Ex parte Gerino*, 143 Cal. 412, 77 Pac. 166 (1904); *Ex parte McManus*, 151 Cal. 331, 90 Pac. 702 (1907); in the case last cited the nominations to the board of examiners for architects were to be made by the San Francisco and Los Angeles chapters of the American Institute of Architects.

[18]*McCurdy v. Jessup*, 126 Md. 318, 95 Atl. 37 (1915).

[19]204 Ala. 455, 86 So. 28 (1920). Cf. *State ex rel Bond v. State Board of Medical Examiners*, 209 Ala. 9, 97 So. 295 (1923).

of 1919 provided that no hides should be shipped from a county without a certificate from the stock inspector of the county. One section of this act exempted Multnomah County, in which Portland is located, as long as a state brand and live stock inspector is maintained at the Union Stockyards in North Portland. An earlier act had provided that the governor should appoint a stock inspector upon the request of the Oregon Cattle and Horse Raisers' Association. Construing these two acts together the court found that failure of the association to request an appointment would nullify the exemption contained in the act of 1919. Hence, since the operation of that law was within the discretion of the association the act was held void as a delegation of legislative power to the association.[20]

The favorable attitude of the courts towards legislation of this kind is in some cases based upon the view that what the statute does is to delegate a merely ministerial power. In 1923 the American Society for the Prevention of Cruelty to Animals brought suit to collect a fifty dollar fine under a statute granting it such fines. In deciding for the society the court held that while general governmental functions may not be delegated to a private corporation such a society as this might function in a purely administrative capacity.[21]

The argument against the delegation of legislative power has frequently been raised in cases involving statutes which provide that public authorities shall act with reference to certain administrative standards worked out by "private groups." Thus a Baltimore ordinance provided that the commissioner of health might designate an official or unofficial testing agency to test gas stoves before permitting their installation in the city. A manufacturer of gas stoves applied to the American Gas Association as the only available agency and found that its charge for testing was fifty dollars more than it exacted of its own membership. The stove

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[20] *State v. Hines*, 94 Ore. 607, 186 Pac. 420 (1920).

[21] *Am. Soc. P. C. A. v. City of New York*, 199 N.Y.S. 728 (1923); cf. *Westbury v. Delaney*, 130 N.Y.S. 833 (1911); *Storey v. Seattle*, 124 Wash. 598, 215 Pac. 514 (1923). In *Corbett v. St. Vincent's Industrial School*, 177 N.Y. 16, 68 N.E. 997 (1903) the plaintiff was injured while at work in the school where he had been committed for petty larceny. In an action for damages the court held that while the school was private it had been selected by the state in lieu of a jail for the commitment of young delinquents and that since its work is one which the government might directly handle it is to that extent a public agency, there could be no recovery.

company contended that there had been an unconstitutional delegation of legislative power in that the power of decision was granted to the testing agency and not to the commissioner of health. The court, however, refused to approve this argument, holding that the real decision had been made by the commissioner, the association having simply determined a fact. It was pointed out that this principle was well established with reference to the professions and that the Supreme Court of the United States in *St. L. I. M. and S. Ry. v. Taylor* had allowed much greater delegation to the American Railway Association in allowing that body to designate to the Interstate Commerce Commission the standard height of drawbars on freight cars.[22] In an analagous case the supreme court of Minnesota in 1896 upheld a statute providing for the inspection of boilers by exempting those which had been inspected and certified by duly authorized insurance companies.[23] And the Kansas court upheld as not constituting a delegation of power to private persons an act providing that dynamite and other explosives might be used in coal mines "under such rules and regulations as may be agreed upon between employers and employes, the same to be approved by the state mine inspector."[24]

However, the recognition of private groups as custodians of administrative standards has been most frequent in the case of the professions. Typical of this is the statute of Washington prohibiting the board of medical examiners from issuing a license to the graduate of any school whose requirements are less than those prescribed by the Association of American Medical Colleges. This act was upheld against the argument that it delegated legislative power to a non-legislative body, the court holding that it was within the power of the legislature to adopt such a standard whether it was wise or not.[25] The view generally taken by the

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[22]*Portsmouth Stove and Range Co. v. Mayor and Council of Baltimore*, 156 Md. 244, 144 Atl. 357 (1929).

[23]*State ex rel Graham v. McMahon*, 65 Minn. 453, 68 N.W. 77 (1896).

[24]*Richards v. Fleming Coal Co.*, 104 Kan. 330, 179 Pac. 380 (1919); see also the Kansas case of *Sartin v. Snell*, 87 Kan. 485, 125 Pac. 47 (1912), for a rather extended discussion of that state's use of private organizations in public administration. Cf. *Titus v. Sherwood*, 81 Kan. 870, 106 Pac. 1070 (1910).

[25]*State v. Bonham*, 93 Wash. 489, 161 Pac. 377 (1916); also *Arwine v. Board of Medical Examiners*, 151 Cal. 499, 91 Pac. 319 (1907), following *Ex parte Gerino, supra* note 17; *Jones v. Kansas State Board of Medical Examination and Registration*, 111 Kan. 813, 208 Pac. 639 (1922). Cf. *State Board of Dental Examiners v. Miller*, 90 Colo. 193, 8 Pac. (2d) 699 (1932) where a dentist whose license had been revoked because of unprofessional conduct

courts in cases involving this point is that expressed in a Tennessee case decided in 1894. Here one Williams was refused a license to practice dentistry on the ground that his dental college was not a reputable one. The state examining board had determined to recognize as reputable such schools as belonged to the National Association of Dental College Faculties. The examining board had adopted the rules of this association and while it was not bound absolutely by them it was to a great degree governed by them. In upholding the action of the board in refusing the license the court held that the rules established seemed "altogether proper" and that the board "had been guided by the opinions and rules of a national association composed of eminent dental men, selected in different states, with a view to promoting uniformity of decision and advancing of the profession." The board had not surrendered its powers or discretion to the association but on the contrary, had made "a reasonable effort to conform to a system recognized over the United States as conducive to the advancement of dental science."[26]

There are, however, a few cases on the other side as in Illinois where the court held that the Board of Dental Examiners could not make its judgment as to the reputability of a dental college dependent upon the decision of the National Association of Dental Examiners. It was within the board's power to decide such questions and this discretion it could not delegate to a private organization.[27]

Aside from the arguments based upon the nature of the appointing power and the non-delegability of legislative power, statutes similar to those we have been discussing have been attacked on various other grounds. For example, it has been alleged that the power of the state to perform various acts may not be delegated to *voluntary or unincorporated* associations. A Montana statute provided that a person failing to pass the examination for registered nurses might appeal to the State

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raised the objection that the board was disqualified because its members were also members of the state dental association and that this association was back of the prosecution. The court sustained the board, remarking that "such public service (*i.e.*, by the association) though tedious, was necessary." *Beard et al v. State Board of Embalmers and Funeral Directors*, 111 Cal. App. 559, 295 Pac. 1052 (1931).

[26]*State ex rel Williams v. State Board of Dental Examiners*, 93 Tenn. 619, 27 S.W. 1019 (1894).

[27]*Illinois State Board of Dental Examiners v. People ex rel Cooper*, 13 N.E. 201 (1887).

Association of Graduate Nurses and should abide by the majority vote of the association after a full hearing had been held on the appeal. It was alleged that the statute was invalid since the nurses' association was a mere voluntary body of persons not organized for the purpose of performing any governmental function. The court held that this contention was without merit since the legislature was not required to name persons or corporations to the exclusion of voluntary associations.[28] The same objection, among others, was raised but rejected in a case involving an Indiana statute authorizing the Indiana Dental Association to appoint three members of the state board of examiners.[29]

In some jurisdictions acts by which use is made of private organizations in public administration have been attacked on the ground that they grant special privileges of a sort frequently prohibited by constitutional provision. Thus the appropriation of $75,000 made to the experiment station at Purdue University in the Indiana Appropriation Act of 1907 was attacked on this point because the program of work was to be agreed on between the director of the station and an advisory committee appointed by the corn growers' association, the dairymen's association and other agricultural and horticultural societies in the state. The court held, however, that the funds made available might be spent under such supervision since no privelege is conferred by the act not available to all citizens on equal terms. The power to appoint the supervisory committee is a duty and not a privilege, said the court, and is to be exercised not for the benefit of the various associations but for the public at large. No aid was being granted to a private body since none of the associations named in the act was organized for private profit.[30]

An exception to the liberal attitude of the courts in upholding legislation against this argument should be made in cases associating political parties with the appointing power. Thus the Missouri court held void a statute providing that one of the three members of a city election board should be named by the governor from a list of three persons nominated by the city central committee of the party opposed to him. This statute was held to contravene

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[28]*State ex rel Marshall v. District Court*, 50 Mont. 289, 146 Pac. 743 (1915).

[29]*Wilkins v. State*, 113 Ind. 514, 16 N.E. 192 (1888); the same argument was also raised in *In re Bulger*, *supra* note 17.

[30]*Bullock v. Billheimer*, 175 Ind. 428, 94 N.E. 763 (1911). Cf. *People v. Provines*, 34 Cal. 520 (1868).

that section of the state constitution prohibiting local or special legislation granting to any corporation, association or individual any special or exclusive right or privilege.[31]

Although an examination of the leading cases indicated that the attitude of the courts has not been free of some inconsistency we are justified in concluding that the practice of governments in availing themselves of the special knowledge possessed by professional and occupational groups is in most jurisdictions safe against the contentions examined in this paper. In view of this fact it seems increasingly unreal to maintain the usual distinction between "public" and "private" agencies. For however learnedly we may write and talk about sovereignty, and the state as the source of law, it is obvious that such abstractions have very little to do with the actual stuff of administration. This being the case we have gone a long way towards bringing "private" groups under the same obligation towards the public which we have long alleged was the case with "public" officials. For, in spite of outstanding scandals and a more or less steady incidence of political corruption we have never quite repudiated the ideal that public office is a public trust. Are we not in a position where we may demand more effectively than we have heretofore that such groups acknowledge their obligation to the public in some more substantial way than in a framed parchment exhibiting an official "code of ethics"?

From the point of view of sound administration such use of professional groups has the undoubted advantage of placing between the electorate and the political executive at the apex of the governmental pyramid the representatives of a legitimate interest-group dedicated to the defense of standards of great potential value to the populace. Such an arrangement may aid not only in democratizing the administration but in protecting it from the inroads of the spoilsmen, thus making it a more efficient instrument of public service. Whether or not these results will

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[31] *State v. Washburn*, 167 Mo. 680, 67 S.W. 592 (1902). A not very convincing attempt is made to distinguish *Ex parte Lucas, supra* note 8, where the ruling was to the contrary. In *Lasher v. People*, 183 Ill. 226, 55 N.E. 663 (1899) a statute providing that certain incorporated associations should each select one of the members of a state board of inspectors from which commission merchants must secure licenses was held in violation of the constitution on the same grounds. Cf. *Fox v. Mohawk and H. R. Humane Society*, 165 N.Y. 517, 59 N.E. 353 (1901); *State ex rel Harvey v. Wright*, 251 Mo. 325, 158 S.W. 823 (1913).

be realized would seem to depend upon two things. In the first place, the professionalism of the interest-group must be a genuine one, uninfluenced by the motive of profit which has in the past, of course, affected the so-called professions scarcely less than it has business groups. In the second place, the influence of such groups upon public administration will ultimately depend upon the support they receive from a genuinely enlightened electorate. For it still remains true as Croly suggested that "an expert administration cannot be sufficiently representative until it comes to represent a better educated constituency."[32]

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[32]Herbert Croly, *Progressive Democracy*, pp. 376–77.

METHODS OF EVASION OF CIVIL SERVICE LAWS

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Any systematization of the techniques of political machine formation must include an analysis of the methods of evasion and avoidance of merit system legislation.[1] The electoral power of the "machine" depends in large measure upon the efforts of disciplined and loyal party workers who may be recruited most readily through the distribution of patronage. Almost uniformly legislators and practical politicians have opposed, at least privately, the enactment of laws providing for the recruitment of public employes upon the basis of merit. Militant reform movements compelled the enactment of such legislation and ways and means came to be devised to mitigate the requirements of the law. Without attempting an extensive survey of the present status of the merit system, examples of evasion in various jurisdictions may be brought together to indicate the more frequently recurring general types.[2]

Limiting the Scope of Merit Laws.—By framing legislation to exclude certain classes of employes from the application of merit requirements and procedures, many positions have been saved to be dispensed at the discretion of the organization. Practically every proposal in Congress for the creation of a new administrative agency is marked by a fight to exclude its employes from the provisions of the civil service regulations, and often the effort meets with success. The disastrous effects of such a step on prohibition enforcement are too well known to require comment.

Although there are some exemptions of specific administrative agencies in states and cities having merit laws, more positions are affected by the exemption of classes cutting horizontally

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[1]The material presented here was used in a slightly different form as a part of the author's doctoral dissertation at the University of Chicago, 1934.

[2]The methods employed by administrations with motives only of the "better" sort to evade requirements of merit laws are in part of the same type as those sketched here. See, for example, New York State Sivil Service Commission, *Report of an Investigation of the Municipal Civil Service Commission and of the Administration of the Civil Service Laws and Rules in the City of New York*, N. Y. Sen. Doc. No. 35 (1915).

through all the administrative departments. Heads of departments and their immediate subordinates, such as deputy commissioners, are generally open to selection upon the basis of political considerations. These jobs are extremely valuable from the patronage standpoint, for it may be said that the value of a job for this purpose increases with its altitude in the administrative hierarchy. The place which their holders occupy in the public eye serves as a constant reminder to the Italians, the Brotherhood of Locomotive Engineers, the Poles, the Catholics, the Negroes, the American Legion, or other pressure group that the administration has recognized them by placing one of their number in a post of power and honor. Furthermore, the possession of a large number of such positions greatly simplifies the matter of discipline within the organization. The leader is constantly being challenged by men who are almost his equal and the astute distribution of positions of this type among the more dangerous contenders for power helps mightily in checking insubordination.

Every important official must have his confidential assistants, personal investigators, private secretaries, or other attachés possessed of a title of relatively high prestige value. Due to the intimate relationship and the delicate matters handled by these persons, it is argued that they should be selected by their superior completely free of any requirement for competitive examination. This contention is often groundless, but after the places are created and exempted from examination requirements they may be used as rewards for deserving members of the organization.

Some positions which for other reasons are thought not to be susceptible of being filled by competitive examination are governed by pass or non-competitive examination provisions. This type of examination gives much greater discretion to the appointing authority than the ordinary open competitive test. In effect, complete freedom may be given to the appointing officer. At the other extreme, laborers are usually exempt from the operation of the competitve procedure. There are loafers and workers, able and disabled persons, whose characteristics could be determined by a personnel officer, but the merit system was introduced with emphasis upon the academic type of examination which precluded the inclusion of this type of employe. This leaves a large number of jobs for unskilled workers which can be used with extraordinary effectiveness in building up organization support. The possible effect of all these exemptions may be seen from the fact

that in 1929, of the 86,509 employes of the City of New York, 246 belonged to the unclassified service, which number included heads and deputy heads of departments; 1,024 to the exempt class; 11,694 to the non-competitive class; and 24,200 to the labor class.[3] Over 40 per cent of the employes of the city were thus exempt from merit procedures.

Slightly different from permanent exemptions from the merit laws is provision for the appointment of temporary employes to fill positions otherwise subject to examination. Legislation usually provides that vacancies in such positions may be filled for thirty or sixty days by temporary employes pending the holding of an examination. By filling competitive positions with temporary employes and repeatedly renewing these appointments merit laws may be practically nullified. As an example of what may be done by this method the West Parks system of Chicago may be cited. Table I shows the progressive increase in the number and proportion of temporary appointees over a period of years. About 1,900 of the 4,500 Cook County (Chicago), Illinois, jobs are subject to the merit laws. During 1928 at least 40 per cent of these positions were filled by temporary appointees.[4] In 1923 approximately 5,000 of the 22,000 positions in the Chicago classified service were filled by temporaries.[5] During the Cermak administration in Chicago the general trend in the number of temporaries was upward with aperiodic fluctuations nicely synchronized with the occurrence of elections. The total number of temporary employes was reliably estimated at between five and six thousand. In Cleveland in 1922 it was found that more than 2,000 of the 5,000 positions subject to examination were occupied by "thirty-day" appointees.[6] The practice was carried to its logical conclusion in Kansas City, where at one time all positions in the city service were held by temporary appointees.[7] In Cuyahoga County (Cleveland), Ohio,

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[3] *Forty-sixth Annual Report*, Municipal Civil Service Commission of the City of New York, p. 14.

[4] E. O. Griffenhagen, "The Merit System in Chicago and Cook County," *National Municipal Review*, XVIII (1929), 693–694.

[5] J. B. Kingsbury, "The Merit System in Chicago from 1915 to 1923," *Public Personnel Studies*, IV (1926), 314–315.

[6] Report of the Cleveland Civic League quoted in *Good Government*, XXXIX (1922), 82–83.

[7] *Good Government*, XLIV (1927), p. 38.

in 1929, 58 per cent of the county's 1,466 positions were either exempt, unclassified, or filled by temporaries.[8] By renewals these positions become in effect permanent, at least for the duration of the party's power. Such appointees, however, may be removed at will, thus greatly simplifying the problem of maintaining organizational discipline.

TABLE I

TEMPORARY APPOINTEES OF WEST CHICAGO PARKS SYSTEM

Year	Number of Positions	Salary Paid to "Temporaries"	Percentage of Total Payroll Paid to "Temporaries"
1915	79	$ 5,021.86	0.0071
1920	234	35,132.93	3.3
1925	636	473,350.33	26.3
1928	1725	1,202,616.90	42.5
1929	1305	984,867.82	39.9
1930	1798	872,777.00	27.4
1931	2212	1,748,501.65	61.2
1932	2122	1,142,163.90	46.7

Source: *Report Dealing with the Physical Condition, Business and Administrative Practices, Personnel Management and Financial Situation in the West Chicago Parks System*, June 10, 1933, p. 31.

Under certain circumstances the civil service commission usually has the authority to exempt positions from examination and this is often done, sometimes for the benefit of the organization and at other times for legitimate reasons. Without the complicity of the commission, positions in the classified service may be left unfilled by the appointing authority and the duties performed by persons appointed under some title not subject to examination. In the federal service it was found at one time that a large number of persons appointed as laborers without examination at the request of various politicians had been assigned to classified duties.[9]

Under the civil service laws of some jurisdictions it is possible to evade the requirement of competitive examination prior to appointment by contracting for services. This exception, designed to provide for the employment of attorneys, accountants, architects, and experts of various kinds on a contractual basis, was used in New York City to furnish a berth for Dr. William H. Walker, brother of the former mayor. The Board of Education contracted for his services as a "medical consultant" to render

[8] *Greater Cleveland*, V (1929), 6–7.

[9] W. D. Foulke, *Fighting the Spoilsmen* (1919), p. 172; also, pp. 130–131.

the same service as a "medical examiner" in the competitive class. When the Court of Appeals nullified this evasion, about 250 employes hired under the contract system in New York City were affected.[10] In Boston contracts were made for the services of laborers. The contractor made a profit in furnishing these men who could have been employed directly by the city.[11] In Chicago it was alleged in a legal proceeding that political employes of the West Parks board were not on the personnel payroll, but were paid with vouchers for materials.[12]

Clerical employes and other attachés of the courts on all levels of government and in practically all jurisdictions remain subject to the patronage system. Due to the insistence upon the independence of the judiciary as a coördinate branch of government, its employes are more often excluded from the operation of civil service laws than not. This action has not been unconnected with the fact that court functionaries are often in a position to render services of peculiar value to the organization, particularly in the lower courts handling minor criminal cases.[13] Similarly, employes of legislative bodies—clerks, pages, stenographers, and the like—are in most cases selected on a patronage basis. In some instances the committees making the selections are frankly named the "patronage committee."

"Right Guys."—The early advocates of civil service reform—affectionately referred to by the "pols" as the "goo-goos"—envisaged civil service commissions as agencies independent of the administrative departments applying the merit laws stringently and without fear or favor. This conception was readily demolished by appointing "right guys," *i.e.*, loyal organization men, to the commissions. "If the mayoralty of the city falls into the hands of the spoilsman who appoints the civil service commission, it is an easy thing to take all the starch out of the civil service requirements. The manifold ways in which this was done under the Walker administration [in New York City] revealed the abuses incident to the commission being appointed by the mayor

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[10]See *New York Times*, July 12, 1933.

[11]Boston Finance Commission, *Reports*, XXII (1926), 299–304.

[12]*Chicago Daily News*, October 30, 1933.

[13]See the impressive list of court employes with their positions in the party organization, *New York Evening Post*, May 16, 1933.

and owing its allegiance solely to him."[14] In Illinois during the regime of Governor Len Small the chief examiner of the civil service commission quoted one of its members as saying that "there will be just examinations enough to keep up appearances."[15] Even when the commission is constituted of men firmly committed to the policies of the merit law and is assisted by a staff of technically proficient personnel officers, it can accomplish little without the voluntary coöperation of the chief executive and the heads of the administrative departments.

An excellent example of what can be done by appointing the "right" men to a commission occurred during Mayor "Big Bill" Thompson's first two terms in Chicago. The two Republican positions on the commission were held by three individuals at various times during his administration. Charles E. Frazier, a prominent member of the Thirty-third Ward Republican organization, was appointed, he said, with the understanding that he should "do nothing unjustified." Alex J. Johnson, vice-president of the William Hale Thompson Republican Club, replied to a query as to the relationship between his political activities and his appointment to the commission: "What of it? You don't think the Mayor would appoint an enemy, do you?" Percy B. Coffin, the third Republican holding membership on the commission during this period, served as a handy man for the mayor in various capacities, including a stint as unofficial patronage dispenser.[16]

The appointment of loyal organization men to the commission is undoubtedly the most effective means for bringing the civil service under the control of the organization. This can be done, of course, only when there is no effective opposition to such a policy. To placate opposition to spoils practices frequently a minority of the commission consists of effective but harmless "window dressing." Or appointments of weak men without malodorous records, easily subject to manipulation, may be made for the same purpose.

Legislative Sabotage.—Control of appropriations for the work of the personnel agency may serve as a means for mitigating the severity of the enforcement of merit laws. However disposed the commission may be, without ample staff to carry on the voluminous

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[14]Samuel Seabury, *Final Report*, In the Matter of the Investigation of the Departments of the Government of the City of New York (1932), p. 40.

[15]*Chicago Daily News*, October 11, 1932.

[16]Kingsbury, *op. cit.*, 309.

and complex work of testing, classification, *et cetera,* it can accomplish little. By reducing the appropriations for the personnel agency the legislative body may effectively draw its fangs. The Chicago Civil Service Commission may be cited as an example. When Mayor Thompson first took office in 1915 the commission had an average staff of 75 employes and an annual appropriation of about $100,000. It was recognized as one of the best personnel agencies in the country. Table II shows what happened to its

TABLE II

STAFF AND APPROPRIATIONS FOR CHICAGO CIVIL SERVICE COMMISSION, 1915–1922

Year	Staff	Appropriation
1915	74	$101,000
1916	63	74,520
1917	37	65,640
1918	37	61,930
1919	39	74,420
1920	31	82,070
1921	31	87,580
1922	33	104,820

Source: Kingsbury, "The Merit System in Chicago from 1915 to 1923," *Public Personnel Studies,* IV (1926), 310. Increased appropriations from 1919 reflect increases in salaries following post-war price rise.

staff and appropriations. Other factors contributed, but by 1923 the commission had sunk to a position of very low repute. The financial strangulation of the personnel agency has been carried to the logical conclusion in Kansas, where no appropriations are made and the state civil service law remains dormant. Short of actually cutting appropriations pressure may be brought to bear upon civil service agencies by members of the legislative body. One can not very well deny a legislator a favor one day and ask him to vote for an appropriation the next.[17]

The Process of Selection.—In the process of examination there is opportunity for maladministration. Although safeguards are usually employed to prevent the identity of the examinee from being known to the rater, they may be evaded. Furthermore, a considerable latitude of discretion in the evaluation of papers is possible due to the type of questions often used in civil service

[17]See Theodore Roosevelt, *Autobiography* (New York: Charles Scribner's Sons, 1926), p. 139, for a method which he employed in securing adequate appropriations for the United States Civil Service Commission when he was a member of that body.

examinations. A Cook County, Illinois, grand jury in 1922 compared the markings of papers by the civil service commission examiners and by the persons who had been brought in by the commission to prepare the questions. Although no proof of abuse of discretion was presented except by inference, the range of variation as indicated by Table III indicates the possibilities.

Numerous instances of unfair grading of examintion papers are available from a study of the Cuyahoga County, Ohio, civil service commission. An examinee, who had not had the experience re-

TABLE III

COMPARISON OF RATING PAPERS BY EXAMINERS AND BY PERSONS PREPARING CERTAIN EXAMINATION QUESTIONS

Paper	Mark by Civil Service Examiners	Mark by Persons Preparing Questions
A	90	70
B	60	80
C	40	85

Source: *Good Government*, XXXIX (1922), 19.

quired to enter the examination, was asked: "When would you permit the addition of sand above the amount called for in the specifications in a batch of concrete?" The answer was: "When the weather is wet, before the engineer has been able to make a test." He went to the head of the eligible list. In an examination for dirt street foreman the following question was put: "Describe in detail and illustrate with a diagram a case where a drain across a street is needed." The reply was: "A drain should be placed under roadway." No drawing was furnished. Although the applicant had not had the required experience for entrance to the examination, he passed and was appointed to the service. In another examination for the same position a man who had been a barber most of his life said in his application: "I did not have any practical experience of this position, but I have a number of barber shops." He was given 70 per cent for experience. Two years' experience in dirt highway construction work was required. In an examination for sewer maintenance foreman answers totaling fourteen lines to five questions earned a mark of 98.4 per cent. A close check of 1,175 names on the eligible lists resulting from 73 examinations by the Cleveland city commission showed that 22 per cent of them had actually failed in the tests.[18]

[18] *Greater Cleveland*, V (1929–30), 8–11, 22, 143.

Members of the organization may take the examination and be appointed with or without chicanery in the ratings. Being appointed, they may do their political work "on the side," assuming, as is customary, a weak enforcement of the rules prohibiting political activity by permanent employes. In some cases positions requiring technical training and practical experience are filled by inexperienced political temporaries who acquire experience at the expense of the public and then secure permanent appointment after examination.

In case of necessity, when the examining authorities are careless, a substitute may take the examination for the applicant. Occasional instances of this have been uncovered. "James M. Curley and Thomas F. Curley were convicted," according to Foulke, "of impersonating two candidates at a civil service examination in Boston and were sentenced to two months in jail."[19] In some cases little publicity is given to coming examinations. This may leave the organization practically free to appoint its candidates through the forms of competition.

Members of the civil service commission or its employes may be bribed to give an applicant a favorable rating.[20] When the examinations are fairly conducted, but an atmosphere of suspicion exists, persons with "inside" information can pick up a little pin money. A municipal civil service commissioner once said that "someone would accidentally or in some improper manner" discover the results of the examination "and would go and obtain money" in return for an assurance that the examinee "would get the rating which he had already earned by his own ability."[21] In other cases persons claiming the power to influence the selection from among the three highest in an examination have collected money from as many as possible of those likely to be appointed, keeping the amounts paid by the successful ones and repaying "those not selected, with the explanation that counter influence was too strong."[22]

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[19]Foulke, *op. cit.*, p. 185, n. 1.

[20]See *Good Government*, XLVI (1929), 111.

[21]*Hearings Before the Select Committee on Investigation of the Attorney General*, U. S. Senate, 68th Cong., 1st sess., pursuant to S. Res. 157, p. 666 (1924).

[22]Chicago Civil Service Commission, *Final Report, Police Investigation*, pp. 49–50 (1912).

Movement of Personnel.—The control of promotion, discipline, and assignment may be employed to persuade recalcitrant members of the administrative personnel, recruited into the service by an open and above board system of examinations, to serve the purposes of the organization in the same way as those appointed by an out and out spoils procedure. Criteria of achievement or failure of achievement in the political organization may be substituted for similar criteria within the administrative hierarchy in the management of personnel. A man may be promoted within the administrative service for gloriously carrying his precinct or he may be made to "go along" with the organization by actual or threatened disciplinary measures.

Because of the difficulty of developing an objective measure of relative merit for promotion in the administrative service, promotion is peculiarly susceptible to manipulation for political purposes. In some cases no effort is made to promote as the result of examinations. Discretion in selecting persons to be promoted is left to the head of the department or some other administrative superior. This discretion may be exercised upon the suggestion of party officials.[23] By its power to determine the classes of employes eligible to take promotional examinations, the Chicago commission was able to favor particular individuals.[24]

Persons entitled to promotion on the results of an examination under some laws may waive their right to someone lower down the promotional list. Pressure may be brought upon them to compel them to do so. In 1915, one Weideling, a sergeant in the Chicago police department, took the examination for police lieutenant ranking forty-fifth on the examination results. Forty-three men waived and Weideling, then becoming one of the three highest, was promoted to a lieutenancy. "It was directly charged in the press that these forty-three men were compelled to waive their rights by pressure and influence brought to bear by the head of the police department in order that Weideling's name might be reached."[25] Control of assignments is a method often used in police departments to defeat the purpose of the merit laws among other things. Police who persist in political indifference may be

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[23]See L. D. White, *Conditions of Municipal Employment in Chicago* (1925), p. 64.

[24]Kingsbury, *op. cit.*, 311.

[25]*Good Government*, XXIII (1916), 4. For further material on waivers, see White, *op. cit.*

sent to the "prairies" or to the "sticks." Assignment to a post far away from home is a powerful persuasive. Continual application of such measures will usually bring the most obstinate person into line.

Positions in the classified service may be abolished as an "economy" measure or on some other basis. New positions with different titles but similar duties may then be created and filled by temporary political appointees. In Chicago the license bureau which had charge of the collection of business and occupational license fees was abolished by council action. A short time later fifty clerks, selected in fact by the fifty Democratic ward committees, were stationed in police station houses to perform similar duties at a much higher cost and a reduction of license revenue. The chief function of these clerks appeared to be to sound the alarm when the police brought in persons charged with crime and to call to their rescue the ward committeemen or other party functionaries.[26] Similarly in Columbus jobs held by classified employes were abolished and later re-created under new titles and filled by political appointess.[27] In Troy, New York, competitive positions were abolished and new jobs exempt from examination, "executive secretaries," were created to handle the work.[28]

It would be a grave error to say that the movement for civil service laws beginning with the passage of the Pendleton Act by Congress in 1883 has not limited to a considerable extent the patronage available to political organizations in many jurisdictions. Nevertheless, ways and means have been found to weaken in varying degrees the efficacy of the administration of these laws. The explanation is simply that the groups of citizens interested in combatting the patronage system have not been powerful enough to compel the enforcement of these rules.

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[26]See *Chicago Daily News*, May 29, 1933, July 20, 1933.

[27]See R. M. Gallagher, "Public Personnel Problems and the Depression," *National Municipal Review*, XXII (1933), 214.

[28]*Good Government*, XLV (1928), 14.

SEMI-PERMANENT TENURE OF ELECTIVE STATE OFFICIALS

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It seems to be widely assumed that elective state officials in all the states generally change about as frequently as does the governor (though not necessarily with the governor), because this is the situation in the eastern states. Such is not the case, however. For instance, eight incumbent elective officials in California, whose constitutionally prescribed term of office is four years (*Calif. Const.*, art. 5, §§ 2, 17; art. 13, §9), have held office for the following periods:[1]

Secretary of State	1911–	(23 years)
Controller	1921–	(13 years)
Treasurer	1923–	(11 years)
Attorney General	1902–	(32 years)
Members, State Board of Equaliation:		
First District	1915–	(19 years)
Second District	1927–	(7 years)
(Predecessor)	1911–1927	(16 years)
Third District	1907–	(27 years)
Fourth District	1919–	(15 years)

Is this semi-permanent tenure by the elective officials (other than the governor) in California an isolated political freak, or is it an example of a political practice restricted to a particular region, or is it a fairly general practice in state government? In no other state is semi-permanent tenure developed to quite the degree in which it is found in California, but since about 1900 it has been usual in California, Oregon, Washington, and Nevada to reëlect those incumbents (other than the governor) who seek reëlection.[2] Semi-permanent tenure may be found in isolated instances in a good many other states, but not as a general practice.

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[1]A similarly long tenure marked the office of surveyor general which was abolished in 1927. One person held this office from 1907 to 1927 (20 years), and now (1934) holds by appointment the office which succeeded to the powers of the surveyor. Long tenure was also characteristic of the superintendent of public instruction, but, in recent years, has ceased to be. The lieutenant governorship has changed hands quite frequently.

[2]In Arizona a small group has consistently returned to office, but its tenure has been interrupted several times and, with the exception of the superintendent of schools, the offices have been filled by different individuals each time the group returned to office.

Some evidence exists to show that protracted tenure may be the product of unusual political situations which appear sporadically in all the states. Not infrequently one official in a state may hold office for a long period of time, while all the other elective officials can secure but one or two terms. For instance, the superintendent of pubic instruction in Wisconsin has held office since 1921 (13 years) and his predecessor held office from 1903 to 1921 (18 years), though no other Wisconsin official except the treasurer remained in office longer than six years during this period. In Michigan the auditor held office from 1909 to 1933 (24 years), and the highway commissioner held office from 1913 to 1929 (16 years), though other elective officials seldom held office for more than four years. In Ohio some recent auditors have had long tenure (*viz.*, 13, 4, 8, and 13 years respectively), though one or two terms seems to be the usual tenure for other elective officials in the state. In Rhode Island, from 1894 to 1933, the tenure of secretaries of state was 15, 15, and 9 years respectively, though with but one exception all other officials had only a short tenure.

Whether this protracted tenure has depended upon the office held or upon the person holding the office is hard to say. Probably it has depended upon both, but mainly upon the office. In Rhode Island one person held the office of treasurer from 1898 to 1918 (20 years), but since 1918 five men have held it, the one retaining it longest holding it only five years. In this case the length of tenure was largely dependent upon the incumbent official. In Illinois the secretary of state held office from 1897 to 1912 (15 years). He was succeeded by three men in quick succession, with terms of one, one, and three years respectively. Then the office was held by one man from 1917 to 1929 (12 years). In this instance long tenure probably was associated with the office, but also depended upon the incumbent proving personally satisfactory.

It is possible that the obscurity of the office held has enabled a shrewd incumbent to remain aloof from factional or partisan strife and to appear to the electorate as almost a non-partisan. Such a situation may account for the reasonably long tenure in Oklahoma of the superintendent of public instruction, commissioner of charities and corrections, the state examiner and inspector, the labor commissioner, and the chief mining inspector, while the more prominent elective state officials—the governor, lieutenant governor, secretary of state, auditor, and attorney general

—change regularly. In California all the officials with long tenure have undoubtedly profited greatly by the relative obscurity of their offices. The controller and treasurer both have shown a desire for the governor's chair and have been active politically, especially in regard to the offering of solutions for the present fiscal problems which are the major issue in state politics, but this does not seem to have stripped them of the benefits of the obscurity of their offices when they have sought reëlection.

While in many of the isolated cases the obscurity of the office held and the personal characteristics of the incumbent official are undoubtedly responsible for his long tenure, these two factors alone are not sufficient to explain a general practice of allowing elective officials semi-permanent tenure. In addition a relatively pacific political atmosphere, a tradition of reëlection, and reinforcing these, some sort of political organization (quite possibly on a personal basis as in California and Washington) seem necessary. For instance, the four states in which semi-permanent tenure is quite general have been exceptionally stable politically. A bitter factional fight between the governor and several other lective officials in Washington culminated, in 1933, in the replacement of all but one of the elective incumbents, a fact that indicates that semi-permanent tenure will not survive as a general practice in the strong winds of serious political war. In California the tradition of reëlection of state officials is strengthened by a parallel tradition of the reëlection of county officers so long as they desire to retain office.[3] And in all the states personal political ties seem to be strong. In California in particular personal politics have for many years replaced party politics. Thus, in these states a peculiar situation has developed which is favorable to the general practice of allowing officials semi-permanent tenure of office. This has allowed what is a rare practice in other states to become general in the Pacific states. This situation is not necessarily a permanent one, and may be changed radically at any time; indeed, it may be disappearing already, under the impact of depression politics. But, of course, its age will now tend to preserve it, since incumbents may always point to their long years of service as a telling argument for their reëlection.

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[3]A marked and contrary tendency, however, is found in regard to the reëlection of the governor. Since 1879 only one governor, Hiram Johnson, was elected twice, and only two, Johnson and Stephens, have served as governor more than four years, the prescribed term.

Discussion of semi-permanent tenure of office calls attention to similar practices, such as allowing all officials two terms, which may exist in some of those states where semi-permanent tenure has not developed. Mere examination of the records of tenure is not, of course, sufficient to establish definitely the existence of such practices; intimate familiarity with local traditions is necessary to reinforce the records. But indications are to be found in records of tenure that in several states a custom has developed of allowing one term, or two terms of office, and no more, to each elective official.[4]

In conclusion, the four Pacific states differ from the others in regard to the length of tenure of elective officials other than the governor. This difference is due to the semi-permanent conjuncture of conditions which appear, but not usually concurrently, in most of the other states, rather than to any fundamental difference between the states. These conditions, (1) a stable and relatively peaceful political atmosphere, (2) a tradition of generally reëlecting officials, and (3) a political organization of some stability, allow officials of some adroitness who satisfactorily fill relatively obscure offices to retain semi-permanent tenure of their offices.

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[4]In some states length of tenure is limited by law, as in Kentucky, where no elective official may succed himself in office. (*Ky. Const.*, §§ 71, 82, 93), and in New Mexico, where officials are limited to two terms of office (*N. M. Const.*, art. 5, §1, adopted 1914). Sometimes such restrictions apply only to particular offices, as in Missouri, where the governor and treasurer may not succeed themselves (*M. Const.*, art. 5, §2), and in South Dakota, where the treasurer is allowed only two terms (*S. D. Const.*, art. 4, §12). Such restrictions of tenure, which effectively prevent semi-permanent tenure, however, are not general.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS
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Debo, Angie, *The Rise and Fall of the Choctaw Republic.* (Norman, Oklahoma: University of Oklahoma Press, 1934, pp. xvi, 314.)

Vestal, Stanley, *New Sources of Indian History,* 1850–1891—The Ghost Dance—The Prairie Sioux—A Miscellany. (Norman, Oklahoma: University of Oklahoma Press, 1934, pp. xix, 351.)

Petrullo, Vicenzo, *The Diabolic Root, A Study of Peyotism, the New Indian Religion, Among the Delawares.* (Philadelphia: University of Pennsylvania Press, The University Museum, 1934, pp. xi, 185.)

The Civilization of the American Indian Series, published by the University of Oklahoma Press, is coming to be well known to students of American Indian history and ethnology. The high standards of these studies have been maintained by Miss Debo and Mr. Vestal in their recent contributions to the series.

The Rise and Fall of the Choctaw Republic is the study of a comparatively populous and advanced Indian group whose republic had its beginning in the ancient Choctaw country east of the Mississippi and was transferred about a century ago into what is now southeastern Oklahoma. The first two chapters, devoted to the primitive Choctaws and various threads of their history before removal to the West, are based almost wholly on printed sources. They reveal, nevertheless, broad investigation and intensive study and constitute a useful resume of Choctaw ethnology. In the preparation of the other ten chapters the author supplemented a staggering array of printed matter with data gathered from official files and other manuscript sources.

In respect to space and relative emphasis Miss Debo's book reveals sound judgment. There are chapters on economic development, crime and the administration of justice, and society in the Choctaw Nation. Several chapters pertain principally to politics and diplomacy, and the relatively large amount of space devoted to these subjects seems defensible. The old time Choctaws were natural politicians and skilled diplomats. Politics and diplomacy, rather than tomahawks and muskets, have always been the favorite weapons with which these Indians defended themselves in the unequal struggle with white men.

Early in the twentieth century the Choctaw Republic was dissolved, and the unique institutions of these people are fast disappearing. In our efforts to build a greater American civilization it might be well to take a few leaves from the book of experience left by this sturdy, simple people—such, for instance, as their land policy and their efforts to conserve natural resources and use them for the benefit of all the people.

Stanley Vestal's *New Sources of Indan History* is in part a supplement to his life of Sitting Bull published some two years ago. The first hundred and twenty pages of the book consist of sixty-two documents, official and unofficial, pertaining to the ghost dance excitement of 1890–1891 and various incidents associated with the last few months of Sitting Bull's career. In the division entitled "Notes on the Sioux Wars with White Troops and Tribal Enemies," Vestal gives the Indians' version of various battles and compares

these accounts with those given by white men who fought the reds. Through patience and tact and evidently at considerable cost both of time and means he gathered from the aged warriors their stories and ascertained the exact number of Indians killed in nearly a score of engagements. In introducing one of his compilations (p. 136) he states: "I consider the figures given for Indian dead in the following table quite as accurate as the figures given by officers for white soldiers killed." His conclusion is that Indian losses were nearly always much less than their white adversaries believed and that, man for man, the plains Indians were far more efficient warriors than the white soldiers they faced.

One of the most useful contributions in the book is a sketch of Sioux history on the plains from the early years of the nineteenth century to the death of Sitting Bull. Of great interest is a series of "notes" on a dozen or more Sioux leaders and a few white persons associated with the tribe. These notes are not thumb-nail biographies but are, on the contrary, narratives of incidents that reveal the souls of these rugged people.

New Sources of Indian History is a great deal more than a collection of documents. Vestal has supplemented his material with his own contributions based on years of investigation and a thorough acquaintance with Indian history. Furthermore, the work reveals the author's admiration for the red men and his rare understanding of the Indian mind. There is no index, but the table of contents is extended. There are thirteen maps and illustrations.

The Diabolic Root, A Study of Peyotism, by Vicenzo Petrullo, pertains to a controversial subject of interest to students of Indian life and society as well as to professional ethnologists. The peyote worshippers enter a tepee, equipped with a simple altar in the shape of a half-moon or horseshoe, and there, by the dim light of a small fire, spend the night in prayer and contemplation, interspersed with songs. An essential part of their worship, and the practice that has drawn severe criticism from certain white persons, is the eating of an herb, a species of cactus, which produces a measure of intoxication. Petrullo's findings support the contention of the Indians that they eat the herb not to satiate their appetites but as an act of worship that satisfies their longing for communion with the Great Spirit.

The practice has prevailed among certain Indians in Mexico for many generations but it was not introduced among the tribes of the South Plains until comparatively recent times. The Delawares, now living in Oklahoma, acquired the religion from their neighbors, the Comanches, Kiowas, and Cheyennes, and are proving ardent in their devotion to it. Petrullo visited the Delawares, ate peyote with them, observed and studied their ceremonies, and has published his findings in considerable detail. His conclusion is that these Indians, finding it impracticable to perform their ancient ceremonies because of economic and cultural difficulties, have found peyotism an acceptable substitute. They have not been satisfied with Christianity as they have practiced and observed it and have, therefore, adopted a faith in which pagan and Christian concepts have been blended. It seems that the membership of the cult is increasing and Petrullo's study suggests the conclusion that peyotism may become a religion of considerable consequence.

A small part of the book—and the most unsatisfactory—is devoted to the history of peyotism. There is a good bibliography but no index. The book is well supplied with pictures and drawings.

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Parmelee, Maurice, *Bolshevism, Fascism and the Liberal-Democratic State.* (New York and London: John Wiley & Sons, 1934, pp. xii, 430.)

Mr. Maurice Parmelee in this volume attempts a very ambitious study, but on the whole it can be said that the attempt is reasonably successful. At any rate, his is a fairly acceptable treatment of the two political systems—Bolshevism and Fascism—which have more or less successfully challenged the Liberal-Democratic state. It appears, however, to this reviewer that Mr. Parmelee gives entirely too little space to the old order. This, of necessity, precludes the thorough analysis and the clinching of his thesis as a conclusion, which one looks for in vain.

The general purpose of the treatment is to be commended. A one-volume work which sets forth the political philosophy, the practical administration, the technique of gaining, retaining, and perpetuating political authority, and the end or purpose of the authoritarian and the liberal-democratic systems of political power is much needed. It is a study which by its very nature requires extensive research and extreme synthesization. Mr. Parmelee has in the main accomplished the first, but with regard to the latter he is deficient. Apparently he wrote too hurriedly, a fault which obviously renders an adequate synthesis all but impossible and which detracts from the value of the study.

In his treatment of Bolshevism, particularly with regard to the purpose or nature of the communist state, Mr. Parmelee states the general thesis characteristic of all philosophers of communism, namely, that man is essentially good and is a highly rational being. This fundamental concept leads them logically to the conclusion that the end of communism will be democracy. Thus Mr. Parmelee writes: "As the communistic society becomes more and more firmly established, it will relax its authoritarianism. . . . Communism is not authoritarian but is democratic and libertarian in theory" (page 58). In another place he says: "The authoritarian methods used by the bolshevists are intended as temporary and should terminate as soon as the ends sought are attained. The dictatorship of the proletariat will cease with the termination of the class struggle. The permanent subjugation of one class by another as under authoritarian capitalism is not contemplated" (page 363).

Mr. Parmelee, in his discussion of Stalin and his method of rise to power, rather refutes the statement that we have every assurance that the end of the communistic state is democracy. Parmelee points out that Stalin became the dominating figure in Russia through his use of patronage in the bureaucracy and, obviously, in the party itself. That Stalin was not the choice of Lenin is popularly known. Recognizing that Stalin rose to power in this fashion, and, no doubt, remains at the top through the same technique, what assurance have we that this method of gaining control will not continue indefinitely? But this obviously would forestall the ultimate democracy of which we are told.

One of his best chapters is that on bureaucracy. Here he points out clearly the problems which confront the communistic state, particularly with regard to the attainment of its avowed ultimate goal. Parmelee is an apologist for Russian bureaucracy at the present on the basis of its utility. However, with this system strongly entrenched, as he admits, what force can overthrow it? He gives us no solution to the problem beyond the implied one that the inherent nature of man—which is motivated always in the interest of the good—will inevitably triumph. Parmelee answers as to the ultimate

end of bureaucracy that "it is hardly conceivable that the time will ever come when individuals will not invade the rights and interests of others" (page 386). And it is here that the entire system of philosophic communism runs into a brick wall.

Mr. Parmelee contrasts or states the points at variance between the Fascism of Mussolini and that of Hitler. He holds no brief for this political system. He states rather forcibly the well-known fact that Fascism as a political system rests upon an archaic capitalistic system. It came into being primarily and ostensibly as a means to the perpetuation of a decaying economic order that could get no more from the Liberal-Democratic state, which was its hand-maiden. When one is aware of the fact that such industrial magnates as Thyssen and Krupp financed the ten-year fight of Hitler to power and a similar group backed Mussolini, then one has a fair picture of the foundation and end of Fascism as a political philosophy.

Mr. Parmelee devotes too little space to his discussion of the propaganda techniques of the two leading Fascist states, Germany and Italy. It is to a great extent dependent upon the success or failure of this part of their program that the final determination of the success or failure of the entire system rests. With regard to the educational systems of the two countries, he might have included very profitably a more detailed explanation of the subjects taught and particularly of the content.

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Gettys, Luella, *The Law of Citizenship in the United States.* (Chicago: The University of Chicago Press, 1934, pp. xxii, 221.)

During the past century, and more especially since the World War, many states, as Professor Quincy Wright states in his foreword to the present volume, have made significant changes in the law of citizenship. Changing attitudes, resulting largely from the trends of nationalism and of social and economic stresses, form the basis for these legal developments and serve to complicate the problems of citizenship and naturalization in municipal law and of nationality in international law. Nevertheless, until the appearance of the treatise by Dr. Gettys, no careful study had been made of naturalization and citizenship in the United States since Van Dyne published his works in 1904 and 1907. Quite aside, then, from any question of its intrinsic merits, the present volume will find interested and appreciative readers; it is, if nothing else, opportune.

Happily, however, the book is more than opportune; for it is an excellent legal study of all the important phases of the law of citizenship in the United States. Beginning with a study of general principles, *i.e.*, the definition, the dual nature, and the sources of citizenship, the author next discusses citizenship by birth under the rules of *jus soli* and *jus sanguinis;* following thereafter she adds chapters on individual naturalization, judicial interpretation of naturalization, the effect of marriage on citizenship, collective naturalization and citizenship in the territories, and loss of citizenship. The concluding chapter presents certain problems, some internal and some international, that remain to plague lawmakers, judges, and diplomats—and, it may be added, teachers who are trying to find their way among the conflicting laws, treaties, and court decisions.

It is not feasible in the limited space of a review to discuss at length the treatment accorded by the author to the several topics; but attention should,

nevertheless, be called to the painstaking care, the admirable conciseness, the orderliness of presentation, and the clarity that pervade the volume. There is economy of words; yet the reader is aware of having perused an adequate treatise and not a dessicated outline. In this short volume may be found the law, tersely stated, or if the law is not clear, then the conflicting opinions. For most of the topics a sufficient historical background is furnished. For all of them, adequate court decisions and other documentation are supplied.

Not content with a clarification of existing laws, the author ventures to suggest and discuss the problems that yet remain in both municipal and international law. There are, to mention only a few, the question of racial discrimination and the status of pacifists in naturalization. Here the author tends to adopt the liberal view. In the international realm there remains the problem of conflicts of nationality as a result of conflicting laws governing the acquisition of nationality of origin and of those instances where states refuse to allow an absolute right of voluntary expatriation. Dual nationality is particularly troublesome in states that have adopted the modern fad of compulsory military service. In her conclusion the author urges the adoption by the United States of a comprehensive code of citizenship laws and, by all the states, of "an international code providing uniform rules for the determination of nationality of origin, the right of expatriation, the status of a naturalized citizen in his native country, the effect of cancellation of naturalization, the effect of marriage on nationality, and the right of election in cases of dual nationality." That progress, however slow, will be made along these lines is reasonably certain. That we are indebted to Dr. Gettys for this thorough, readable treatise is even more certain.

CHARLES A. TIMM.

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Commission of Inquiry on Public Service Personnel, *Better Government Personnel.* (New York: McGraw-Hill Book Company, 1935, pp. v, 171.)

In December, 1933, the Social Science Research Council appointed the Commission of Inquiry on Public Service Personnel. The Commission comprised Messrs. L. D. Coffman (as Chairman), Louis Brownlow, Ralph Budd, Arthur L. Day, and Charles E. Merriam. Dr. Luther Gulick was named Secretary to the Commission and Director of Research. The setting up of the Commission was in pursuance of certain recommendations made by President Hoover's Research Committee on Recent Social Trends. President Roosevelt gave the enterprise his endorsement. *Better Government Personnel* presents in summary form the conclusions reached by the Commission, together with the recommendations in which those conclusions naturally eventuate.

Pages three to nine of the volume constitute a summary of the recommendations of the Commission. These are divided into some twenty "General Recommendations" and a dozen "Special Recommendations." Chapter I treats of "Government and Personnel." The bulk of the chapter is devoted to the examination and rejection of the more common shibboleths which underlie the American attitude toward governmental personnel. Chapter II examines "A Career Service": noting first the need for such a service; second, the conditions which are inseparable from such a service; third, the steps which must be taken if such a service is to be instituted; and fourth, the character of the administrator proper. Chapter III deals with such major

problems as those which relate to recruitment, promotion, temporary appointments and probation, tenure and discharge, retirement and pensions, governmental structure, and the dangers of bureaucracy. Chapter IV considers such additional problems as fixed terms, technical posts, legal staffs, veteran preference, residence and apportionment, etc. Chapter V finds among the probable practical results of the new personnel policy advocated a more efficient government, a more devoted personnel, a new position and a revivified spirit for our educational system, an improved tone for politics, and in sum, opportunity to approach that liberty which the American people have known only by reputation under the regime of the spoilsmen.

One might suppose that treatment of the subjects enumerated would require a volume of considerable size. As a matter of fact, however, only eighty-five pages are devoted to them. The last half of the book is given over to appendices, which relate in turn to a brief summary of public employment, an analysis by numbers of the federal personnel, a digest of the federal civil service law, a digest of the civil service laws of the various states, and "A Statistical Analysis of the Public Service." The value of these appendices for the student of personnel administration need not be emphasized.

Better Government Personnel is the first of a series of publications which will include, besides the *Minutes of Evidence of the Commission*, twelve monographs on various problems relating to personnel in this country and abroad. It may be perceived readily that the Commission has set for itself a gigantic task. In its initial offering it has established a high standard for the series. It has, indeed, brought forth a statement on public personnel which for conciseness and lucidity has not, in the opinion of this reviewer, been equalled.

ROSCOE C. MARTIN.

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Coker, Francis W., *Recent Political Thought.* (New York: Appleton-Century, 1934, pp. ix, 574.)

This long anticipated volume of Professor Coker represents tremendous labor and research in several languages. Hinging his discussions upon the theories of the mid-nineteenth century, he moves down into the present epoch of contradictory and confiicting "isms." One of the outstanding contributions of the book is that of extensive bibliographical data.

The organization of the book is subject to question. It is difficult to explain the discussion of nineteenth century anarchism—featuring Bakunin, Kropotkin, and Tolstoi—as socialistic theory. One could scarcely characterize Proudhon or Bakunin as socialists, even though they coöperated for a time with Karl Marx and his group. And one need read but little of Tolstoi to realize his utter aversion to socialism and its incidental political regimentation. The American anarchists have also fared badly at the author's hand, for they have, with the exception of Tucker, been but briefly mentioned.

There are many other points upon which students of political theory will disagree with the author. For instance, his discussion of the "Fascist State" (468 *et seq.*) raises the question of whether Fascism is a state or governmental phenomenon. It is, indeed, probable that our whole galaxy of political theory nomenclature needs the refinement of definition. Does the fact of regimentation or that of liberalism alter or even affect the real essence of the state? Is the state other than a purely psychological concept anyway?

It is difficult to see why the timocratic basis of Italian Fascism is other than a mere governmental phenomenon or that the passing of Fascism would have any material effect upon the existence of the Italian state.

Professor Coker has eruditely traced the development of socialism for the past eighty years, though his treatment of Christian Socialism is inadequate, while that of Syndicalism, if it be a socialistic doctrine, is probably given too much space. However, after discussing the various schools of socialistic thought, he turns to a discussion of the attack upon democracy. Many will not understand the reason for this obfuscation. It apparently presumes that socialism and democracy are antithetical, which does not necessarily follow. In fact, democracy may well develop under socialism. The confusion lies, I believe, in the unwitting admixture of the forms and functions of government. Is it not entirely possible to implement socialism under monarchical rule or even in a more arbitrary regime? In fact, some socialists, like George Bernard Shaw, despair of the realization of socialism except through the instrument of arbitrary government.

The third section of the volume—"Political Authority and Individual Liberty"—is especially well done. Here the author has marshalled his tremendous knowledge of the monistic and pluralistic doctrines of sovereignty with a deft hand. This section represents a distinct contribution to the knotty problems that revolve about the right of a government to demand the sacrifice of individuals for the ends of the government, though here, as before, there exists the confusion between "state" and "government." However, the objection is of purely academic character and the discussion is unquestionably valuable to students of political thought. By and large, I should say that this volume is the finest American work of its character that has been published since those of Parrington and McIlwain.

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Taylor, Paul Schuster, *An American-Mexican Frontier, Nueces County, Texas.* (Chapel Hill: University of North Carolina Press, 1934, pp. iii, 337.)

Mr. Taylor's book is a consumingly interesting sociological study principally about the present-day position of the Mexican and Mexican-American in Nueces County. The study is based, as the author states in his introduction, principally upon field research done in and around Corpus Christi in 1929. The bulk of the content is made up of statements of residents of and transient workers in the county. The first few chapters are devoted to a cursory history of the Mexican-American relationships in the region up to the present, tracing the early settlement, the coming of the Anglo-Americans, and the displacement by them of the Mexican landholders. It should be added, however, that the book is historical only in a restricted sense; its main purpose is the consideration of the present day Anglo-American and Mexican-American relationships. The author sticks to this main theme assiduously, even to the point almost of disappointing those of us who would like to know more of the Mexican's and the Mexican-American's part in the politics of the region. Comment is confined almost entirely to Nueces County, now considerably smaller than it was originally.

The position of the Mexican and the Mexican-American in the county is viewed from all angles—historical, economic, social, and political. The

Mexican, of course, is almost totally of the laboring class. His labor problems and status are discussed exhaustively. He is generally considered to be indispensable to the farmers in the cotton-picking season. The social clash is perfectly presented by the opinions taken from Mexicans and Americans of all sorts and degrees. It is pointed out that the Mexicans in Nueces County occupy a status different from that of their fellows in the Rio Grande Valley, principally because of the fact that there are still wealthier Mexican-Americans in the Valley who hold their own along with the wealthier Anglo-Americans. The author goes fully into the problems of school separation and domiciliary isolation, showing, in the main, that although the Mexican-American occupies a position above that of the Negro in the region, he nevertheless is discriminated against in schools and at "white" barber shops and soda fountains. The full force of the drawing of this "color" line is seen when the author tells of the trouble caused by a refusal of a barber shop (because they did not recognize him) to serve the Mexican Consul resident in Corpus Christi. As for politics, the author points out that the practice has varied from the manipulation of Mexican and Mexican-American votes to the total disfranchisement of those who resisted manipulation. A discussion is made of the aims and activities of the League of United Latin-American Citizens, a Mexican-American organization with the main aim of making good American citizens of Mexican-Americans over the whole of South Texas. The author appends to his volume some thirty pages of his field notes and a brief discussion of the Raymondville peonage cases of 1927.

The book as a whole is thorough, revealing, and well worth the reading time, even to the casual reader. J. M. RAY.

The University of Texas.

Muhlfeld, Helen Elizabeth, (Ed.), *A Survey of the Manor of Wye.* (New York: Columbia University Press, 1933, pp. xxii, 256.)

Miss Muhlfeld has made a valuable contribution to the study of the medieval English manorial system both by the publication of the Latin text of a fifteenth century *Survey of the Manor of Wye* and by the interesting and informative discussion of peculiarities of land tenure, administration, nomenclature, and economic and social customs in Kent. The text which covers almost two hundred pages is followed by three appendices: the first is a list of servile and free yokes including all tenements called yokes in any of the earlier surveys, with the area, rental value and field name of each; the second consists of two tables listing the references in each of the manuscript surveys of Wye, to (a) the servile yokes and (b) the free yokes; the third appendix reproduces the references made by the several surveys to that unit of land called cakezokes for the purpose of providing "an opportunity for studying the changes which occurred over a period of nearly three centuries." There is also a comprehensive bibliography and a workable index.

The book grew out of an inquiry into the fate of the monastic lands and their tenants after Henry VIII's destruction of the religious houses, an inquiry which created an interest in the evolution of tenure, agricultural arrangements and methods of cultivation on monastic lands during the several centuries preceding the dissolution. With this object in view a comprehensive study was made of all the available documents relating to a single manor from Saxon to Tudor times. The Manor of Wye, which was a royal vill as far back as as 762, was selected for the purpose.

This Kentish manor was acquired by Duke William of Normandy and granted to Battle Abbey shortly after the battle of Hastings, the Abbey retaining it up to 1538, when it was surrendered to the crown. Although it was hardly a typical manor in that it reflected the local peculiarities of an abnormal county, it was an extremely interesting one in that it illustrated the variations from the norm.

An extensive and almost continuous series of surveys made between 1250 and 1500 constituted the chief basis of this study. Of these the survey made in the middle of the fifteenth century has been reproduced because of its "great completeness and detail." "The extreme conservatism in the management of Wye," Miss Muhlfeld informs us, "justifies the theory that the conditions which prevailed in that manor about 1450 may have existed at a much earlier time," which makes it possible "to deduce from a detailed fifteenth century rental conditions of a much earlier period."

Villeinage of the type that flourished elsewhere was never found in Wye; although certain yokes were called servile, their tenants were not unprivileged, and "some of the richest land-holders in Wye held land in the servile as well as in the free yokes." Peculiar units of measure, gavelkind succession, the absence of the large common fields in tillage, and an unusual nomenclature distinguished the Kentish land system from most other parts of the kingdom, features which have indicated in the opinion of some scholars, the persistence of a strong Roman or Celto-Roman influence. One regrets that the author did not throw more light upon this controversial question. Without much explanation, she does state, however, that her study "does not confirm the theory of a marked survival of Roman agricultural influence in the county."

MILTON R. GUTSCH.

The University of Texas.

Seymour, Charles, *American Diplomacy During the World War.* (Baltimore: The Johns Hopkins Press, 1934, pp. xii, 417.)

Woodrow Wilson stood for reëlection in 1916 on the platform: "He kept us out of war." His victory at the polls may be accepted as public endorsement of his neutrality policy. Yet in a few short months this peace advocate appeared before Congress recommending war with Germany. Were the people betrayed in their leadership? Was the President insincere in pledging abstinence from the European conflict? An emphatic and convincing "No!" is Professor Seymour's answer to these questions. Basing his study upon recently published documentary sources, as well as unpublished correspondence, of which the most important are the letters of President Wilson to Colonel House, Professor Seymour shows how President Wilson sincerely endeavored to maintain neutrality, and how the force of circumstances compelled the United States to intervene actively on the side of the Allies.

The first half of the book shows Wilson struggling to maintain neutrality in the face of a double attack on American rights: from the one side by the Allies in their interference with neutral trade; from the other side by the German attempt to break the Allied blockade by a counter-blockade of the submarine. Our difficulties with Britain were most serious, but the submarine issue with Germany "Not merely threw into the background the dispute with Great Britain and France over trade rights, but compelled the United States to enter the war on their side." In answer to the charge that

the United States intervened to protect the Allied loans of Wall Street, Professor Seymour says, "There is no evidence that any financial 'influence' at any time touched the President. . . . It was the German submarine warfare and nothing else that forced him to lead America into war."

The second part of the book is devoted to the successful efforts of American diplomacy to secure coördination of effect between the Allies and the United States, and the reconciling of conflicting war-aims. The failure of the Allies to agree on a restatement of war-aims resulted in President Wilson assuming the initiative with his Fourteen Points. One of Wilson's greatest diplomatic victories was his forcing of the Allies to approve the Fourteen Points in the so-called Pre-Armistice Agreement with Germany.

The prominent diplomatic rôle played by Colonel House during the periods of American neutrality and American belligerency is everywhere apparent in this work. Although predisposed in favor of Wilson and House the author's conclusions appear to be adequately substantiated by trustworthy documentary evidence.

J. LLOYD MECHAM.

The University of Texas.

Celesia, Ernesto H., *Federalismo Argentino: Cordoba.* (Buenos Aires: Libreria "Cervantes," 1932, 3 vols., pp. 314, 332, 450.)

This work by one of the abler Argentine historians covers intensively a period of transition in the constitutional, political, and social history of the province of Cordoba, Argentina, between 1814 and 1821, and summarizes more generally the constitutional development of the province until Argentina was united under a single government after the deposition of Rosas in 1852. Although the independence of Argentina was declared in 1810, it was not until 1814 that the Spaniards were driven from the upper provinces and Cordoba attempted to settle down to try responsible self-government. But the task was not easy, and these seven years of preliminary adjustment are filled with numerous invasions, revolutions, and political changes. Almost immediately Artigas of the eastern provinces was welcomed into the province by the aristocracy of large landowners in their struggle against the governor, Ocampo, and his policies. The first volume is taken up almost entirely with an account of the struggles for the control of power under the regime of Artigas, and especially with missions to Artigas in the Banda Oriental and to Buenos Aires. The second volume covers the second and third revolutions of Bulnes, the invasions of Lopez from Santa Fe, the mediation of Belgrano, and the political dominance of Bustos. The third volume is the most interesting, because it records the final integration of a fairly successful government in 1821 and thereafter, together with the provisions for religious control, citizenship, elections, and the organization of the executive, legislative, and judicial systems. But the troubles of the province were by no means ended. The Spanish rule had left in its wake numerous causes of conflict over economic and class interests which only time and slow reform could heal. At one time there were four governors contending for the control of the province. The court system broke down and special judges free from political alliances had to be appointed. There was, strange to say, at first a scarcity of lawyers, but this has never again occurred. And there was a long struggle over the freedom of the press, against revolution, dictatorships, and political assassination. It is surprising how true to type each history of a South American province runs in the first half of the nineteenth century.

This one is especially interesting because it may serve as an introduction to a general pattern of history. It is meticulously and carefully done. There is also a good bibliography. L. L. BERNARD.

Washington University.

Clark, Fred E., *Readings in Marketing.* (New York: The Macmillan Company, 1933, pp. xx, 798.)

This is a revised edition of the author's well-known book, originally published in 1924. There are many new readings and the material has been carefully arranged in logical sequence, starting with marketing problems in individual industries and ending with the social implications of the market. The somewhat necessarily disconnected material is bound together by footnote cross-references that call attention to closely related arguments and facts in the different readings. Diagrams and charts supplement the explanation of some principles.

The book undoubtedly merits many adoptions in marketing classes. The editor has made a careful choice of material, and has preserved an excellent balance between readings describing the efficient functioning of some institutions of the marketing system and those that are critical of inadequacies in the system. Professor Clark's detailed knowledge of the Chicago market has given him an insight into subjects deserving special emphasis.

It is true, of course, that however carefully an editor chooses the readings, a reviewer can find gaps and what he is pleased to think may be a misplaced emphasis in a study that covers so many controversial subjects as marketing. In this book, *e.g.*, most of the readings are concerned with events of the prosperous years 1922–1929; or of 1930 and 1931, before we realized fully the depth and prolonged life of the depression. We have a feeling that readings chosen for the years 1933 and 1934 would give a different tone to the book. Also, sufficient emphasis is not given to the relationship between purchasing power and the market, particularly to the expenditures of the different income-receiving classes for various commodities. More space, too, might have been profitably given to the marketing methods of the consumers' coöperatives, and to attempts of barter groups to establish a market. The rôle of the housewives as the nation's buyers is not analyzed sufficiently. The merits of the book, however, far over-weigh any defects that may be present, and it is the reviewer's pleasure to recommend it heartily to teachers and students of marketing. FREDERICK L. RYAN.

University of Oklahoma.

Wilkinson, Herbert A., *The American Doctrine of State Succession.* (Baltimore: The Johns Hopkins Press, 1934, pp. vi, 137.)

This is perhaps the most incisive examination of material relating to state succession so far appearing in the United States. In a compact small volume the author has confined his investigation to a study of the issues presented by a "territorial reorganization accompanied by a change of sovereignty" and has considered only those cases "wherein a new state power is extended over or set up in a territory in place of another state power or organization" (p. 16). The study is undertaken for the purpose of "discovering whether or not the United States has a consistent policy for dealing with state changes, and what that policy is" (p. 15).

By definition Mr. Wilkinson has restricted the scope of his observations, treating only five fields: public laws and government; private laws; nationality; public and private debts; and treaties. Circumscribing himself thus, he draws general conclusions as to the policy and practice of the United States in relation to the problems of state succession.

The author emphasizes the view that the practice of the United States regarding the effects of state succession demonstrates the existence of two distinct categories of rights and obligations, public and private, and that each has been treated differently. He goes further to state that none of the doctrines formulated by publicists can competently explain the policy of the United States in regard to both of these categories. Nor would one be correct in assenting that we have "accepted all the powers of the ceding state and rejected all of its obligations" (p. 117). With reference to "political" agreements the author holds that one state cannot be legally bound by the promises of another state, while in "civil" treaties "if the conditions upon which such treaties were based remain unchanged by the transfer of sovereignty; and if there be a government in the territory able to perform them, unless some other treaty supersede or abrogate them, such treaties will continue in operation because of the community of purpose between the sovereign states involved" (p. 128).

However, it is important to notice that the United States in assuming obligations and debts because of a transfer of sovereignty has given more pains to seeing that right and justice be administered than she has to the consideration that purely legal obligations be fulfilled.

Mr. Wilkinson seems to arrive at the conclusion that while what has been done by the United States and the reasons given as to why such was done present both a general theory and a rather consistent practice, yet neither theory nor practice has in each particular case and at all time been consistent.

STUART A. MACCORKLE.

The University of Texas.

Hackett, Charles Wilson, (Ed.), *Pichardo's Treatise on the Limits of Louisiana and Texas.* (Austin, Texas: The University of Texas Press, 1934, Vol. II, pp. xv, 618.)

This is the second volume of a projected four-volume work containing the annotated English translation of Father Pichardo's "Argumentative Historical Treatise with Reference to the Verification of the True Limits of the Provinces of Louisiana and Texas." This voluminous treatise (approximately one million words) was written to disprove the claims of the United States that Texas was included in the Louisiana Purchase of 1803.

The twenty chapters of Volume Two are a continuation of Part II (begun in Volume One) which Pichardo calls "a description of the plains of Cíbola," or Texas and the Trans-Mississippi West. The purpose of his descriptive chapters on the western tributaries of the Mississippi and of the rivers of Texas was to determine "which, and of what nature, are the eastern limits of those plains." "But everyone agrees," he says, "that these limits are fixed by the celebrated river which, because of its size, the army of Hernando de Soto named Rio Grande, without giving it another name."

Pichardo's description of the Indians of Cíbola constitutes the principal contribution of this second volume. The section devoted to the Indians is important principally because there are included in the dissertation extracts from many documents hitherto unpublished.

It was also Pichardo's purpose to prove that the famous Quivira, first visited by Coronado in 1541, was in Texas and consequently was always united to the Spanish crown. By clever use of documentary evidence, supported by a profound knowledge of the Indian tribes of the plains of Cíbola and of the geography of the region, Pichardo constructed a plausible case for rerouting Coronado's expedition to East Texas, "to the real Quivira in the province of the Asinais." Although the reviewer is not yet willing to discard the conclusions of Winship, Bolton, Bandelier, Hodge, and others, that Quivira was located in the vicinity of Wichita, Kansas, it is conceded that Pichardo's arguments compel a reëxamination of this historical problem.

The editor's introduction to Volume Two is short, perhaps too short. His annotations, however, are adequate in every respect, and evidence the meticulous care with which the *Treatise* was studied. The index is excellent. Professor Hackett maintains in this volume the high standards of historical editing which he set in the first volume of Pichardo's *Treatise*.

J. Lloyd Mecham.

The University of Texas.

Tatum, Georgia Lee, *Disloyalty in the Confederacy*. (Chapel Hill: The University of North Carolina Press, 1934, pp. xii, 176.)

This study was prepared as a doctoral dissertation at Vanderbilt University to "help dispel the false idea that the inhabitants of the seceded states were a unit in supporting the 'Lost Cause'." Its acceptance for publication by the University of North Carolina Press assures the reader at the outset that Miss Tatum's *Disloyalty in the Confederacy* is an interesting book.

The author is very careful to define the terms "disloyal," "disaffection," and "unionist" in the preface, because these were words which figured so largely in the matter of disloyalty. Louisiana is not included because most of the state was lost to the Confederacy early in the second year of the war. Tennessee, although its Confederate government fell in 1862, is included, however, because the work of Union sympathizers in that state provoked investigation. The reader may regret that the author "has been content to present the facts as she found them and to leave conclusions to the reader"; on the other hand, the absence of conclusions leaves the reader free to form his own, which, in all likelihood, would agree with those of the author.

Miss Tatum's statement of materials used and her acknowledgments to librarians and scholars in the field of history indicates the extensive character of her preparatory work. Additional information, however, would have been gained from the perusal of some collections of private papers which are now available.

In the opening chapter the author lists and discusses opposition to secession, opposition to Confederate laws, the conscription acts, the criticism of conscription acts by state authorities, of impressment laws, of the tax-in-kind law, of the suspension of the writ of habeas corpus, and the prevalence of suffering as the eight causes of disloyalty. The second chapter on the development of peace societies treats of three "disloyal" organizations: The Peace and Constitutional Society in Arkansas; the Peace Society of Alabama,

which extended into Georgia, Mississippi, and probably Florida; and the Order of the Heroes of America, found in North Carolina, East Tennessee, Southwest Virginia, and probably South Carolina. The third chapter deals with disloyalty in Arkansas and Texas; the fourth gives an account of the Peace Society in Alabama; the fifth is the story of disaffection in the other Gulf states; the sixth treats of the Heroes of America in the Carolinas; and the seventh discusses unionism in East Tennessee and Southwest Virginia.

The reviewer wonders why John H. Aughey, *Tupelo*, p. 558, was given as the only reference for the murder of Unionists on the Nueces, discussed on p. 46, when *O. R.*, ser. I, vol. IX, p. 614, and *O. R.*, ser. I, vol. LIII, p. 454, were available. Bessie Martin, *Desertion of Alabama Troops from the Confederate Army* (New York, 1932), which was omitted from the secondary references, would have offered some suggestions for the fourth chapter, for disloyalty and desertion were often closely bound together.

R. L. Biesele.

The University of Texas.

Douglas, Paul H., *The Theory of Wages.* (New York: The Macmillan Company, 1934, pp. xx, 639.)

Though one would readily assume that this discussion results from the controversies of the depression years, it is not so. The study was initiated back in the "Artificial Decade" when the general attitude of the United States was optimistic of the economic future. This assurance was expressed by a President in the following homily: "Don't sell America short." But Professor Douglas, viewing the rapid use in the capital structure, questioned the future position of labor in such an economy. The present voluminous study is the result of that curiosity. The original manuscript was awarded the Hart, Schaffner and Marx prize in 1926. For more than seven years the author continued to gather more material and revise his manuscript in conformity to his research results. Furthermore, the study represents a greater synthesis of much of the material that he included in his *Real Wages in the United States* and his *Unemployment.*

Beginning with the marginal productivity theses of the classical economists, and especially of Ricardo, Mill, and Cairns, Douglas seeks to determine statistically the various variables—labor, capital, production, interest, etc.—and to construct mathematical formulae for their interpretation. This represents an ambitious work in statistical economics. Those who are trained only in literary economics will encounter particular difficulty in following the discussion. The author even admits that many of the formulae are beyond his understanding, though he insists that he has the utmost confidence in the ability of those who worked out these equations.

Of particular interest is Douglas's treatment of the supply of labor and the probable future population trends. Vital statistics reveal that the birth-rate has fallen precipitously in Europe and the United States since the World War. The author also shows that an increase in real wages is usually accompanied by a decrease in birth-rate. Incidentally, the Raymond Pearl theory of the influence of population density upon the birth-rate receives considerable polite buffeting in the book.

The book is generously documented. Forty-seven pages are given over to the presentation of important tables. Besides this statistical appendix, a voluminous bibliography of approximately one thousand items is included. A

total of ninety-one charts is dispersed through the book for purposes of illustration. And, in addition to the thirty-five tables of the statistical appendix, sixty-eight tables are to be found in the text. All in all, the work represents a great contribution in the field of economic theory. And though it is not a book for the lay or student reader, it unquestionably insures to Professor Douglas a permanent position in the history of economic thought.

CORTEZ A. M. EWING.

University of Oklahoma.

Fairchild, Henry Pratt, *General Sociology.* (New York and London: John Wiley and Sons, 1934, pp. 634.)

There have evolved two general patterns or types of textbooks in introductory sociology. In general these two types may be characterized as the older and the newer conceptions of sociology. The older texts were much concerned with the various approaches to the subject proper, and many were devoted to the general subject of social evolution. Materials of an anthropological, geographic, economic, and political nature were freely utilized. In the last few years there has been a decided trend away from this type of text and toward placing the major emphasis upon contemporary society. For the most part these more recent texts have started out with a consideration of the social group in one form or another. Some have utilized the community as a beginning; others a more detailed consideration of the different types of groups that go to make up the community and society. The remaining portions have been concerned largely with an analysis of social structures and the processes of interaction operating within the society.

With certain variations, *General Sociology* by Professor Fairchild conforms to the contemporary approach. The social population is given more attention than in the general run of newer texts. Emphasis upon economic culture is also much more pronounced. Considerable attention is given to social disorganization resulting from the breakdown in social control. Other than a possible improvement in the arrangement of chapters the book is well written and is a valuable contribution to the materials of the introductory texts.

J. J. RHYNE.

The University of Oklahoma.

Reid, Edith Gittings, *Woodrow Wilson: The Caricature, the Myth and the Man.* (New York: Oxford University Press, 1934, pp. ix, 242.)

Although this book reviews Wilson's life from childhood to his death, it tells practically nothing new about his career; it is primarily concerned with the characteristics of the man himself as he was seen by a sympathetic but discerning woman friend. She saw him as a kindly, sensitive, high-minded but self-confident idealist who was unflinchingly devoted to making democracy efficient through intelligent leadership and public discussion. This democratic idealism was in no sense political opportunism but the expression of his whole life from youth onward; and his career as student, writer, professor, president of Princeton, and political leader was a sustained effort to put these fixed principles into effect. He had the faults as well as the virtues of the idealist. His mind was warmly humanitarian, not coldly scientific. He was never able to understand the common run of self-seeking human beings, although he thought he did. "He did not [understand people]; he always

idealized the quality and capacity of those to whom he was giving the best he had. He was sure he knew the masses when he only knew their needs, not their desires." Here, perhaps, is the key to his final tragic failure.

CHARLES W. RAMSDELL.

The University of Texas.

BOOK NOTES

The recent Japanese aggressions in Manchuria were unquestionably in violation of the Nine-Power Pact, and there appears to be strong probability that these activities were also in violation of the Pact of Paris and the Covenant of the League of Nations. The inefficacy of peace machinery in this instance brings to focus the great problem of treaty enforcement. There exists a vast network of treaties designed to maintain orderly relations among states, yet the failure of one or more of the parties to observe articles of treaties has been so common as to shake confidence in treaties. The rule has been, unfortunately, that when national policy and treaty provision are not in accord, policy prevails. Since the enforcement of treaties is a problem of general concern, and since sanctions are the means of inducing the observance of treaty obligations, Dr. Payson S. Wild, Jr., in *Sanctions and Treaty Enforcement* (Cambridge, Mass.: Harvard University Press, 1934, pp. xv, 231) has atempted to bring the idea of sanction into an understandable relation to the problem of treaty enforcement. He seeks to combat the idea that all treaties are sacred. "The law postulates," he says, "that treaties are inviolable, but has heretofore done little to provide an orderly process for revising or terminating them. . . . One of the chief reasons why sanctions have so often encountered hostility and suspicion has been the fear that they would tend to freeze a status quo into a rigid mould, with no corresponding 'thawing process' being provided." In intra-state matters escape from contract is possible (*e.g.*, the repeal of the gold clause), but legal escape is not usually provided internationally. If lack of faith in the pledged word contributes greatly to the feeling of international insecurity, then a common sense solution is that only sanctions should be provided which there is a disposition to enforce. Sanctions without overwhelming public opinion in support are worse than useless. Dr. Wild's interesting and informative study suggests avenues of approach to the important problem of treaty enforcement which, if pursued along the lines indicated, should help to clear the international atmosphere. J. L. M.

The Government of Texas, A Survey (Dallas: Arnold Foundation, Southern Methodist University, 1934, pp. x, 148), consists of a series of fifteen papers presented at the First Arnold Foundation Conference on Public Affairs edited by S. D. Myres, Jr., Acting Director of the Foundation. The compendium constitutes a survey "undertaken as a preliminary step to a more thoroughgoing study" of the political institutions of the state inaugurated by the Southwestern Social Science Association. The individual contributors are probably the most competent persons in the state in their respective fields and have in every instance done an excellent job of what they set out to do. The papers describe the status of various aspects of the government of the state and most of them follow with specific recommendations for improvement. Perusal of such a volume arouses melancholy speculations as to the

value of emphasis upon procedural and structural reform characteristic of current political science. And some of the participators in the survey go on record as sharing in this sentiment. Diagnosticians of the ills of the body politic will have to make a more searching analysis than is attempted here. If the promised "thoroughgoing study" is based on a careful analysis of the social matrix of government in Texas, probably more convincing interpretations of such phenomena will emerge. All of which is no criticism of the collaborators in this venture, for they have done their assigned tasks well. It is hoped that with this auspicious beginning the interested groups will prosecute the proposed study to a successful conclusion. V. O. K., Jr.

The late John Holladay Latane's *A History of American Foreign Policy* (Garden City and New York: Doubleday, Doran and Company, 1934, pp. xvi, 802) has been published in a revised and enlarged edition. Mr. David W. Wainhouse has performed competently the task of revision and enlargement. For scholarship, liberal interpretation, and agreeable style, the first edition of Latane's *American Foreign Policy* was preëminent in the field. Mr. Wainhouse has performed a signal service to the teachers and students of American diplomacy in our schools and colleges in making Latane's work serviceable once more by bringing it up to date. The chapters revised and expanded deal with: Caribbean Policies, World Politics in the Pacific, and Pan Americanism. There are six new chapters on Disarmament since the Washington Conference, The United States and the Permanent Court of International Justice, The Pact of Paris, The Sino-Japanese Conflict and Post-War Agencies of Peace, War Debts and Reparations, and The Breakdown of Isolation. It is now possible for the student to trace through this work the threads of American policy to about January 1, 1934. This revised edition should be welcomed, as was the first edition of the book, as the leading one-volume work on the subject of American diplomacy. J. L. M.

Richmond, M. V., *An Introduction to Sex Education* (New York: Farrar and Rinehart, 1934, pp. 312). One of the anomalies of man is his apparent hesitancy to gain a thoroughgoing knowledge of himself and his physical and emotional life. Social taboos have doubtless played a part in causing a dearth of materials in the particular field. Another contributing factor is to be found in the fact that some of those who have attempted to write upon the subject have treated it in a sensational manner. The psuedo-scientists in the field of sex education have undoubtedly been the worst enemies of a healthy and sane attitude toward sex education. In spite, however, of the garblings of the false prophets of sex, sound literature on the subject has been increasing in the last decade, and more and more the subject is being given consideration by competent writers. The development of psychiatry has also led to a more thorough and scientific consideration of the subject. *An Introduction to Sex Education* is written by one of the better known psychologists. The book deserves to be classed as one of the scientific volumes in the field. The point of view is sane and wholesome. Materials treated include biological reproduction in man, the role of sex in primitive man, changing attitudes concerning marriage and sex, the psychology of sex, sex problems, and sex and society. J. J. R.

Teachers and students in the field of international relations will welcome the publication of *Documentary Textbook on International Relations* (Los Angeles: Suttonhouse, 1934, pp. xxvii, 848), by John Eugene Harley. Even where libraries have available most of the documents and materials, the amount of such source material has grown so vast as to make helpful an easily accessible documentary textbook. The present volume contains well selected and edited material on international organization and coöperation, the pacific settlement of international disputes, the renunciation of war, and the limitation and reduction of armaments. The twelve bibliographies (Part Five) make a noteworthy feature. In view of the nature of the material included in the book some readers may question whether a more accurate title would not have been *Documentary Textbook on International Government.*

C. T.

In *Gobernantes del Nuevo Reyno de Granada durante el Siglo XVIII* (La Universidad de Buenos Aires, 1934, pp. 124) Ernesto Restrepo Tirado has presented new materials from the Archives of the Indies at Seville regarding the twenty presidents and viceroys of the eighetenth century in the old Spanish colony which is now Colombia. While the author has aimed only at furnishing research materials not previously current, the accounts of these twenty men have unity and are decidedly interesting, as well as valuable historically. This is No. 64 of the research publications of the Institute of Historical Investigations of the University of Buenos Aires. L. L. B.

Studienausgabe der Verfassungsgesetze der Tschecoslowakischen Republik (Reichenberg, pp. 936), by Dr. Leo Epstein, was published in 1932 by Gebruder Stiepel Ges. m. b. H. The publication constitutes a very complete edition of the constitution of Czechoslovakia and related documents and laws. An exhaustive index adds greatly to the usefulness of the volume.

R. C. M.

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